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Volume 10A

MINNESOTA JURY INSTRUCTION GUIDES

Sixth Edition

CRIMINAL [CRIMJIG]

Chapters 17—End

Prepared by the

MINNESOTA DISTRICT JUDGES ASSOCIATION
COMMITTEE ON CRIMINAL JURY
INSTRUCTION GUIDES

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2015-2016 INTRODUCTION TO THE SIXTH EDITION

The Sixth Edition of the Criminal Jury Instruction Guide continues thirty-eight years of judicial review of laws and cases by the Minnesota District Judge Association Criminal Jury Instruction Guide Committee to aid judges and attorneys in the preparation of jury instructions. Proper use of the instructions requires judges and attorneys to pay attention not only to what the instruction itself says but also to the footnotes and Comments to avoid the various pitfalls and limitations that may apply to a particular instruction. Many instructions, especially those including a predicate offense, such as burglary, require a careful attention to footnotes and Comments so that a legally accurate jury instruction can be drafted.

The Committee has taken the opportunity posed by a new edition to experiment with variations in the form of the jury instructions, most notably Chapter 11 – Homicide, and Chapter 13 – Assaults. Many of the questions that formed interrogatories in the past edition have been incorporated as elements in the offenses, unless the legislature has indicated that certain parts of the offense (generally the level of harm or the value of property) go to sentencing rather than to the commission of the offense. Other sentence-enhancing provisions, including possession of a dangerous weapon or firearm, have been moved to Chapter 8, now titled Sentencing Proceedings.

New or improved instructions are now available murder or assault of a prosecuting attorney or judge; non-support of a child or spouse; perjury; RICO; sale of tobacco and tobacco-related items to minors; lawful gambling fraud; and many of the drug offenses. The definitions of "causation" and "possession," including constructive possession have been assigned their own CRIMJIGs, although they have been incorporated to the greatest extent possible in the jury instructions in which they apply. The CRIMJIG which defined force and coercion, on the other hand, has now been incorporated throughout Chapter 12, Sex Crimes.

There is also new commentary on criminal sexual conduct by clergy members based upon the *Wenthe* and *Bussman* cases; burglary of an apartment building; and clarifying the effect of the

Royston on being in possession of a dangerous weapon or firearm. On-going developments in instructing on circumstantial evidence has also been included.

At the same time, the Committee has made substantial effort to see that the instructions parallel the statutes as closely as possible, that statutory and case citations are correct, and that useful commentary has been added, while extraneous and irrelevant commentary has been removed.

ACKNOWLEDGEMENTS

The Committee would like to thank Judge Stephen Halsey for his contributions on the instructions on the use of social media, Judge Nicole Engisch for her contributions on the instructions for self-defense, and Judge Hilary Caligiuri for her contributions on the instructions for drug offenses.

The Committee gratefully acknowledges the invaluable work and contributions of their law clerks: Jamie Bergerson, Elizabeth M. Cadem, Samuel M. Johnson, Baylea Kannmacher, James E. Morrison, Rebecca Peterson, Bob Putnam, and Daniel S. Shub.

The Committee also wishes to thank Stephen E. Forestell for his continuing hard work and dedication in preparing this edition of the Criminal Jury Instruction Guide.

COMMITTEE ON CRIMINAL JURY INSTRUCTION GUIDES
MINNESOTA DISTRICT JUDGES ASSOCIATION

St. Paul, Minnesota
May, 2015

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EXPLANATORY NOTE

Scope and Organization of Instructions. The instructions in this publication are divided into two parts. Chapters 1 through 8 comprise the General Part; Chapters 11 through 33 cover Specific Crimes. The General Part is divided into two sections. The first of these, including Chapters 1 through 3, contains instructions designed to be given the jury before and after trial in most criminal cases. The second section of the General Part, including Chapters 4 through 8, covers general principles of the criminal law, such as liability for crimes of another, attempts, conspiracy, defenses and consideration of elements that might result in an enhanced sentence following the determination of guilt. The Specific Crimes in Part II include most offenses under the laws of Minnesota that the Committee believes are likely to be submitted to a jury for trial.

Forms of Instructions for Specific Crimes. For a specific crime, two instructions are provided. The first defines the crime; the second sets forth its elements. In the Comments, these two are frequently referred to respectively as the "Defined" Instruction and the "Elements" Instruction. The "Defined" Instruction has been kept as short as possible, and generally follows the statutory language to the extent that the words and ideas in the statute are familiar to lay persons. The "Elements" Instruction breaks each crime down into its essential elements, which are numbered so that the jury may more easily remember or refer to them. On occasion, we have used non-statutory language when we have determined it was necessary to do so in order to help the jury better understand the elements. The trial judge should always compare the statute to the jury instruction guide to be satisfied that the choices the Committee has made accurately reflect the trial court's interpretation of the statute. We also have tried to eliminate needlessly repetitive phrases.

Following the numbered elements, a paragraph appears that begins "If you find that each of these elements has been proven beyond a reasonable doubt," etc. In this paragraph, the jury is told that if it finds that the elements have been proved, the defendant is guilty. It is also told what to do if it finds any element has not been proved. Generally this means that the jury must find defendant not guilty, but sometimes it means that it must consider lesser offenses. In a few cases, we have incorporated the lesser-offense charge into the charge on the main offense.

This has been done only when (as in the case of murder in the first degree) a lesser offense is almost always included, or when (as in the case of aggravated robbery) the lesser offense results from the failure to find that a single specific element of the main offense has been proved.

Although it used to be a general rule that special verdict forms were not to be used in criminal cases, that rule has now changed. Following the United States Supreme Court decision in *Blakely v. Washington*, 542 U.S. 296; 124 S.Ct. 2531 (2004), it became clear to the Committee that those factors of the crime that affect the possibility of an enhanced sentence are best handled by giving them to the jury as questions on the jury form to be answered "yes" or "no". The questions are generally framed so that the more incriminating answer is "yes". This approach has been used before in the jury instructions, most often (as in theft) when the degree of a crime turns on the value of some property, or when it turns upon the level of harm inflicted upon a victim. The Committee, with this edition, has inserted several items as elements that used to be included in the interrogatories, based upon legislative language indicating that whether a portion of the offense is an element or a sentencing consideration.

In the individual instructions there are many instances in which we have used blanks, parentheses, brackets, and alternative paragraphs. In most instances, we believe that the significance or meaning of these devices is clear; when it is not, we have sought to explain them in a footnote. As a general rule, parentheses indicate options for factual variations, whereas brackets indicate optional element choices, depending on the portion of the statute that has been charged.

We have also moved several formerly footnoted items directly into the instruction as they seem to be missed when jury instructions are prepared. Again, the footnotes play an important part in preparing the instructions and should be consulted.

In many cases, an element of the offense is a prior incident or conviction. In such cases, the defendant may stipulate to the prior incident or conviction and remove that element from the jury's consideration. It is important that the stipulation (which is the waiver of a right to a jury trial on an element of the offense) is a personal waiver. The defendant's attorney can enter a waiver on behalf of the defendant. See *State v. Kuhlman*, 806 N.W.2d 844 (Minn.2011).

Submitting Written Instructions to the Jury. We strongly encourage the judges to submit written instructions to the jury. Minnesota Rules of Criminal Procedure, Rule 26.03, subd. 18(4), provides that "[t]he instructions may be in writing and in the discretion of the court a copy may be taken to the jury room when the jury retires for deliberation." Moreover, the Minnesota Supreme Court has encouraged trial courts to give written jury instructions in most criminal cases to better ensure fair results by juries unversed in the law. See *State v. Swain*, 269 N.W.2d 707, 715-16 (Minn.1978).[1] Such a practice can eliminate the difficulties that a jury has in absorbing, comprehending, and applying legal principles. A single oral presentation can be inadequate to inform a jury about areas with which they are generally unfamiliar. By making the jury instructions readily available during deliberations, the court ensures that the jury need not disrupt their discussions at crucial times to reassemble in the courtroom for another reading of the disputed or forgotten instructions.

Before written instructions are submitted to the jury, both counsel and the court should scrupulously examine the jury's copy to ensure that it is correct. The copy should bear no markings that would identify which party requested any specific instruction or underlinings that might cause a jury to give undue weight and force to particular words. Submitting multiple copies will make it even easier for the jury to discuss the instructions.

Venue. In each "Elements" Instruction, the following element appears: "* * *, (some element of the offense) (defendant's act) took place on (or about) ____________ in ____________ County." This is in accordance with Article I, Section 6, of the Minnesota Constitution ("...the right to a speedy and public trial by an impartial jury of the county or district wherein the crime shall have been committed...) and M.S.A. § 627.01. In *State v. Krejci*, 441 N.W.2d 510 (Minn. Ct. App.1989), the Court held that M.S.A. § 627.15, which allows prosecution of a case of child abuse to be venued wherever the child was "found," was a violation of Article I, Section 6 of the Minnesota Constitution if applied to a case in which defendant did not commit at least one element of the offense in the same judicial district. With the advance of electronic communications, venue in stalking cases has particularly focused upon the one element requirement, including where a communication is made or received, or where the defendant or victim resides.

Comments. In preparing these instructions, our task has been, in one important respect, very different from that of our colleagues who prepared the civil instructions. The proportion of statutory law to judicially pronounced law is almost the opposite in the criminal law as it is in civil law. Indeed, we have found many sections of the criminal statutes that have never been interpreted by the Minnesota appellate courts. It has been necessary for us to interpret ambiguous passages, and to reconcile some seemingly direct contradictions. We have sought in the Comments to point out these problems when we have found them, and to state why we have resolved them as we have. The Comments cite the important decisions that have interpreted our statutes or these instructions, but we have not tried to prepare a treatise on the criminal law. The cases are cited only when we believe they cast light on the specific problem of instructing the jury.

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[1] In *Swain*, the Court advised that whenever either party so requests, all instructions should be submitted in writing to the jury in order to avoid placing undue influence on any particular instruction. *State v. Swain*, 269 N.W.2d 707, 716 n. 13 (Minn.1978).

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PART II. SPECIFIC CRIMES

B. PROPERTY CRIMES

CHAPTER 17

BURGLARY

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CRIMJIG 17.01

BURGLARY IN THE FIRST DEGREE—DEFINED

Under Minnesota law, whoever[1]

[1] enters a building without the consent of the person in lawful possession,

[2] enters a building by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession,

[3] remains within a building without the consent of the person in lawful possession,

(with intent to commit a crime) (and commits a crime while in the building), and

[A] the building is a dwelling, and another person, not an accomplice, is present in it,

---

17.01

[1] Note that the statute includes as defendants those who enter ". . . either directly or as an accomplice . . ." M.S.A. § 609.582, subds. 1, 2, 3, 4. See M.S.A. § 609.05 and CRIMJIG 4.01 for liability for aiding and abetting a crime.

[B] the person when entering or at any time while in the building possesses a dangerous weapon or any article used or fashioned in a manner to lead (________) (another) to reasonably believe it to be a dangerous weapon or an explosive,

[C] the person assaults another within the building or on the building's appurtenant property,

is guilty of a crime.

COMMENT

M.S.A. §§ 609.581 and 609.582, subd. 1.

On proof of intent, see *State v. Witte*, 280 Minn. 116, 158 N.W.2d 266 (1968); *State v. Crosby*, 277 Minn. 22, 151 N.W.2d 297 (1967). The Supreme Court held in *State v. Colvin*, 645 N.W.2d 449 (Minn. 2002) that the violation of an order for protection (OFP) was insufficient to establish first-degree burglary, absent commission of or intent to commit a crime other than violation of the OFP. It specifically found that intent to violate the no-entry provision of an OFP does not satisfy the burglary requirement of intent to commit an independent crime. Violation of the OFP must constitute something more than mere entry into the home to support the burglary charge. Review the dissent of Justice Russell Anderson that suggests an artfully-drawn finding of fact may have led to a different outcome.

The crime intended is not a lesser-included offense of burglary. *State v. Minton*, 276 Minn. 213, 149 N.W.2d 384 (1967).

"Building" includes any place suitable for affording shelter for human beings. Thus, a motor home, even though it was not a fixed structure, was a building for purposes of this statute. *State v. Hofmann*, 549 N.W.2d 372 (Minn. App. 1996). *See also State v. Schotl*, 289 Minn. 175, 182 N.W.2d 878 (1971) ("dwelling" has same meaning as under an earlier statute; it is enough if part of building is a dwelling, even though the defendant enters another part).

CRIMJIG 17.02

BURGLARY IN THE FIRST DEGREE—OCCUPIED DWELLING—ELEMENTS

The elements of burglary in the first degree are:

First, the property involved in this case was a dwelling. A "dwelling" means a building[1] used as a permanent or temporary residence.

Second, the defendant [entered the dwelling without the consent of the person in lawful possession][2] [entered by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession] [remained within a building without consent of the person in lawful possession].[3] [The entry does not have to have been made by force or by breaking in. Entry through an open or unlocked door or window is sufficient.] [Whoever enters a building open to the general public does so with consent, except when consent is expressly withdrawn before entry.] [The defendant need not have entered the building without the consent of the person in lawful possession, nor does it matter whether that person knows of the defendant's remaining, so long as that person does not consent to the defendant's remaining in the building.]

Third, another person, not an accomplice, was present in the dwelling when the defendant entered it or at any time when the defendant was in the dwelling. An "accomplice" is a person who could be charged with the same crime as the defendant.[4]

[1] Fourth, the defendant (entered) (or) (remained in) the

17.02

[1] A "building" is a structure suitable for affording shelter for human beings, including any adjacent, appurtenant, or connected structure. M.S.A. § 609.581, subds. 2 and 3.

[2] For definition of lawful possession see CRIMJIGs 17.15 and 17.16.

[3] To enter without "consent" also means (1) to enter by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession; (2) to remain within a building without consent of the person in lawful possession. M.S.A. § 609.581, subd. 4.

[4] Accomplice defined, see CRIMJIG 4.01.

dwelling with intent to commit ________.[5] It is not necessary that the intended crime was actually completed or attempted, but it is necessary that the defendant had the intent to commit that crime at the time that the defendant (entered) (or) (remained in) ________. Whether the crime was intended must be determined from all the circumstances, including the manner and time of (entry) (or) (remaining in the building), the nature of the building and its contents, any things the defendant may have had with the defendant, and all the other evidence in the case.

[2] Fourth, the defendant committed the crime of ________[5] while in the building.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.581, subd. 4, and § 609.582, subd. 1(a).

In *State v. Hendrickson*, 528 N.W.2d 263 (Minn. App. 1995), the Court of Appeals affirmed a conviction for burglary of an occupied dwelling. The Court held that the burglary of a church rectory, which was attached to the church by a hallway, when the church contained people, constituted burglary of an occupied dwelling.

In *State v. Nelson*, 523 N.W.2d 667 (Minn. App. 1994), the Court of Appeals held that it was not burglary of an occupied dwelling if another person entered the dwelling after the burglar was already present. This statute was amended in 1995. This jury instruction reflects the new statute.

The Supreme Court held, in *Munger v. State*, 749 N.W.2d 335 (Minn. 2008), that the "entry with intent to commit a crime" element of a burglary offense, does not also require that the intent must be to commit the crime within the building.

The Minnesota Supreme Court held, in State v. Holmes, N.W.2d

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[5] State the crime alleged and read CRIMJIG or statutory definition.

(Minn. 2010) that a conviction of first-degree burglary with assault was not a bar to a conviction of or sentence for "any other crime" committed during the burglary, finding that the phrase "any other crime" means a crime that requires proof of different elements than the crime of burglary. The court relied on the language of M.S.A. § 609.585 which provide that "[n]otwithstanding section 609.04, a prosecution for or conviction of the crime of burglary is not a bar to conviction of or punishment for any other crime committed on entering or while in the building."

A person who remains in a building or apartment, after being asked to leave by a person who is in lawful possession of the building or apartment, can be guilty of burglarly. *State v. Crockson*, 854 N.W.2d 244 (Minn. App. 2014).

CRIMJIG 17.03

BURGLARY IN THE FIRST DEGREE—WEAPON—ELEMENTS

The elements of burglary in the first degree are:

First, the defendant [entered a building[1] without the consent of the person in lawful possession[2]][3] [entered by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession] [remained within a building without consent of the person in lawful possession]. [The entry does not have to have been made by force or by breaking in. Entry through an open or unlocked door or window is sufficient.] [Whoever enters a building while open to the general public does so with consent, except when consent was expressly withdrawn before entry.] [The defendant need not have entered the building without the consent of the person in lawful possession, nor does it matter whether the person knows of the defendant's remaining, so long as that person does not consent to the defendant's remaining in the building.]

Second, the defendant possessed a dangerous weapon[4] or an article used or fashioned in a manner to lead (another) (________) to reasonably believe it to be a dangerous weapon or an explosive when entering or at any time while in the building. "A dangerous weapon" means any firearm, whether loaded or unloaded, any device designed as a weapon and capable of producing death or great bodily harm, or any

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17.03

[1] Building and shelter defined, see M.S.A. § 609.581, subds. 2 and 3, CRIMJIG 17.14.

[2] Lawful possession defined, see CRIMJIGs 17.15, 17.16. Note that an owner can divest himself or herself of the right to lawful possession of the building through an agreement with a co-owner. *State v. Spence*, 768 N.W.2d 104 (Minn. 2009)

[3] To enter without "consent" also means (1) to enter by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession; (2) to remain within a building without consent of the person in lawful possession. M.S.A. § 609.581, subd. 4.

[4] The statute does not impose an additional mens rea requirement with respect to the element of possession of a dangerous weapon, i.e., the defendant does not have to knowingly possess a dangerous weapon. Possession alone is sufficient to meet the element. State v. Garcia-Gutierrez, __N.W.2d__ (Minn. 2014)

combustible or flammable liquid or other device or instrumentality that in the manner it is used or intended to be used is calculated to produce death or great bodily harm. "Great bodily harm" means bodily harm that creates a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any part of the body, or other serious bodily harm.[5]

[1] Third, the defendant [entered] [or] [remained in] the building with the intent to commit ________[Insert Definition and Elements of Crime Alleged].[6] It is not necessary that the intended crime was actually completed or attempted, but it is necessary that the defendant had the intent to commit that crime at the time the defendant [entered] [or] [remained in] the building. Whether the defendant ________ intended to commit the crime must be determined from all the circumstances, including the manner and time of [entry] [or] [remaining in] the building, the nature of the building and its contents, any things the defendant may have had with the defendant, and all the other evidence in the case.

[2] Third, the defendant committed the crime of ________ [Insert Definition and Elements of Alleged Crime] while in the building.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.582.

A burglar who comes into the possession of firearms once inside a building is subject to the three-year minimum sentence under M.S.A. § 609.11, subd. 5(a), as a defendant in possession of firearms. *State v. Herbert*, 601 N.W.2d 210 (Minn. App. 1999). The defendant does not have to knowingly possess a dangerous weapon. Possession alone is sufficient to meet the requirements of the element. *State v. Garcia-Gutierrez*, 844 N.W.2d 519 (Minn. 2014).

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[5] Dangerous weapon and great bodily harm defined, see M.S.A. § 609.02, subds. 6 and 8, CRIMJIGs 13.04 and 13.10.

[6] State crime alleged and read CRIMJIG or statutory definition.

An owner can divest himself or herself of the right to lawful possession of the building through an agreement with a co-owner. *State v. Spence*, 768 N.W.2d 104 (Minn. 2009)

CRIMJIG 17.04

BURGLARY IN THE FIRST DEGREE—ASSAULT—ELEMENTS

The elements of burglary in the first degree are:

First, the defendant [entered a building[1] without the consent[2] of the person in lawful possession][3] [entered by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession] [remained within a building without consent of the person in lawful possession]. [The entry does not have to have been made by force or by breaking in. Entry through an open or unlocked door or window is sufficient.] [Whoever enters a building while open to the general public does so with consent, except when consent was expressly withdrawn before entry.][4] [The defendant need not have entered the building without the consent of the person in lawful possession, nor does it matter whether that person knows of the defendant's remaining, so long as that person does not consent to the defendant's remaining in the building.]

Second, the defendant assaulted a person within the building or on the building's appurtenant property.[5]

[1] Third, the defendant [entered] [or] [remained in] the building with the intent to commit the crime of ________ [Insert Definition and Elements of Alleged Crime].[6] It is not necessary that the intended crime actually was completed or attempted, but it is necessary that the defendant had the intent to commit that crime at the time that the defendant [entered] [or] [remained

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17.04

[1] Building and shelter defined, see M.S.A. § 609.581, subds. 2 and 3; CRIMJIG 17.14.

[2] To enter without consent" also means (1) to enter by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession; (2) to remain within a building without consent of the person in lawful possession. M.S.A. § 609.581, subd. 4.

[3] Lawful possession defined, see CRIMJIGs 17.15, 17.16.

[4] Building and shelter defined, see M.S.A. § 609.581, subds. 2 and 3; CRIMJIG 17.14.

[5] Assault and bodily harm defined, see M.S.A. § 609.02, subds. 7 and 10; CRIMJIGs 13.01, 13.02.

[6] State crime alleged and read CRIMJIG or statutory definition.

in] the building. Whether the defendant intended to commit the crime must be determined from all the circumstances, including the manner and time of [entry] [or] [remaining in] the building, the nature of the building and its contents, any things the defendant may have had with the defendant, and all the other evidence in the case.

[2] Third, the defendant committed the crime of ________ [Insert Definition and Elements of Alleged Crime][7] while in the building.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. §§ 609.581, 609.582, subd. 1.

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[7] State crime alleged and read CRIMJIG or statutory definition.

CRIMJIG 17.05

BURGLARY IN THE SECOND DEGREE—DEFINED

Under Minnesota law, whoever

[1] enters a building without the consent of the person in lawful possession,

[2] enters a building by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession,

[3] remains within a building without the consent of the person in lawful possession,

(with intent to commit a crime) (and commits a crime while in the building), and

[A] the building is a dwelling,

[B] the portion of the building entered contains a banking or other business of receiving securities or other valuable papers for deposit or safekeeping, and entry is with force or threat of force,

[C] the portion of the building entered contains a pharmacy or other lawful business or practice in which controlled substances are routinely held or stored, and entry is forcible,

[D] when entering or while in the building, the person possesses a tool to gain access to money or property,

is guilty of a crime.

COMMENT

M.S.A. §§ 609.581 and 609.582, subd. 2.

In *State v. Hofmann*, 549 N.W.2d 372 (Minn. App. 1996), the Court of Appeals held that a motor home was a "building" for purposes of the burglary statute, and affirmed a conviction for second degree burglary of a mobile home in which the owners resided on a full time basis.

CRIMJIG 17.06

BURGLARY IN THE SECOND DEGREE—DWELLING—ELEMENTS

The elements of burglary in the second degree are:

First, the defendant [entered a building[1] without the consent[2] of the person in lawful possession][3] [entered by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession] [remained within a building without consent of the person in lawful possession]. [A "building" is a structure suitable for affording shelter for human beings, including any [adjacent] [appurtenant] or connected structure.] [Whoever enters a building that is open to the general public does so with consent, except when consent was expressly withdrawn before entry.] [The defendant need not have entered the building without the consent of the person in lawful possession, nor does it matter whether that person knows of the defendant's remaining, so long as that person does not consent to the defendant's remaining.]

Second, the building entered was a dwelling. A "dwelling" is a building used as a permanent or temporary residence.

[1] Third, the defendant (entered) (or) (remained in) the building with intent to commit the crime of ________ [Insert Definition and Elements of Alleged Crime].[4] [It is not necessary that the intended crime was actually completed or attempted, but it is necessary that the defendant had the intent to commit that crime at the time the defendant (entered) (or) (remained in) the building. Whether the defendant intended to commit the crime must be determined from all the circumstances, including the manner and time of (entry) (or) (remaining in) the building, the

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17.06

[1] Building and shelter defined, see M.S.A. § 609.581, subds. 2 and 3; CRIMJIG 17.14.

[2] To enter without "consent" also means (1) to enter by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession; (2) to remain within a building without consent of the person in lawful possession. M.S.A. § 609.581, subd. 4.

[3] Lawful possession defined, see CRIMJIGs 17.15, 17.16.

[4] State crime alleged and read CRIMJIG or statutory definition.

nature of the building and its contents, any things the defendant may have had with the defendant, and all the other evidence in the case.]

[2] Third, the defendant committed the crime of ________ [Insert Definition and Elements of Alleged Crime][5] while in the building.

Fourth, the defendant's act took place on [or about] ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. §§ 609.581, 609.582, subd. 2.

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[5] State crime alleged and read CRIMJIG or statutory definition.

CRIMJIG 17.07

BURGLARY IN THE SECOND DEGREE—BANK—ELEMENTS

The elements of burglary in the second degree are:

First, the defendant [entered a building[1] without the consent[2] of the person in lawful possession][3] [entered by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession] [remained within a building without consent of the person in lawful possession]. A "building" is a structure suitable for affording shelter for human beings, including any [adjacent] [appurtenant] or connected structure. [Whoever enters a building that is open to the general public does so with consent, except when consent was expressly withdrawn before entry.] [The defendant need not have entered the building without the consent of the person in lawful possession, nor does it matter whether that person knows of the defendant's remaining, so long as that person does not consent to the defendant's remaining.]

Second, the portion of the structure entered was a building containing a banking business or other business of receiving securities or other valuable papers for deposit or safekeeping.

[1] Third, the defendant [entered] [or] [remained in] the building with intent to commit the crime of ________ [Insert Definition and Elements of alleged crime].[4] [It is not necessary that the intended crime was actually completed or attempted, but it is necessary that the defendant had the intent to commit that crime at the time the defendant [entered] [or] [remained in] the building. Whether the defendant intended to commit the crime must be determined from all the circumstances, including the

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17.07

[1] Building and shelter defined, see M.S.A. § 609.581, subds. 2 and 3; CRIMJIG 17.14.

[2] To enter without "consent" also means (1) to enter by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession; (2) to remain within a building without consent of the person in lawful possession. M.S.A. § 609.581, subd. 4.

[3] Lawful possession defined, see CRIMJIGs 17.15, 17.16.

[4] State crime alleged and read CRIMJIG or statutory definition.

manner and time of [entry] [or] [remaining in] the building, the nature of the building and its contents, any things the defendant may have had with the defendant, and all the other evidence in the case.]

[2] Third, the defendant committed the crime of ______ [Insert Definition and Elements of alleged crime][5] while in the building.

Fourth, the defendant's entry was with force or threat of force.

Fifth, the defendant's act took place on [or about] ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. §§ 609.581, 609.582, subd. 2.

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[5] State crime alleged and read CRIMJIG or statutory definition.

CRIMJIG 17.08

BURGLARY IN THE SECOND DEGREE—CONTROLLED SUBSTANCES STORED—ELEMENTS

The elements of burglary in the second degree are:

First, the defendant [entered a building[1] without the consent[2] of the person in lawful possession][3] [entered by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession] [remained within a building without consent of the person in lawful possession]. A "building" is a structure suitable for affording shelter for human beings, including any [adjacent] [appurtenant] or connected structure. [Whoever enters a building that is open to the general public does so with consent, except when consent was expressly withdrawn before entry.] [The defendant need not have entered the building without the consent of the person in lawful possession, nor does it matter whether that person knows of the defendant's remaining, so long as that person does not consent to the defendant's remaining.]

Second, the portion of the building entered contained a pharmacy or other lawful business[4] practice in which controlled substances are routinely held or stored.

[1] Third, the defendant [entered] [or] [remained in] the building with intent to commit the crime of ________ [Insert Definition and Elements of alleged crime].[5] [It is not necessary that the intended crime actually was completed or attempted, but it is necessary that the defendant had the intent to commit that crime at the time the defendant [entered] [or] [remained in] the

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17.08

[1] Building and shelter defined, see M.S.A. § 609.581, subds. 2 and 3; CRIMJIG 17.14.

[2] To enter without consent" also means (1) to enter by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession; (2) to remain within a building without consent of the person in lawful possession. M.S.A. § 609.581, subd. 4.

[3] Lawful possession defined, see CRIMJIGs 17.15, 17.16.

[4] The court should instruct the jury that the business or practice is lawful and that the substances are controlled substances.

[5] State crime alleged and read CRIMJIG or statutory definition.

building. Whether the defendant intended to commit the crime must be determined from all the circumstances, including the manner and time of [entry] [or] [remaining in] the building, the nature of the building and its contents, any things the defendant may have had with the defendant, and all the other evidence in the case.]

[2] Third, the defendant committed the crime of ________ [Insert Definition and Elements of alleged crime][6] while in the building.

Fourth, the defendant's entry was forcible.

Fifth, the defendant's act took place on [or about] ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. §§ 609.581, 609.582, subd. 2.

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[6] State crime alleged and read CRIMJIG or statutory definition.

CRIMJIG 17.09

BURGLARY IN THE SECOND DEGREE—TOOL—ELEMENTS

The elements of burglary in the second degree are:

First, the defendant [entered a building[1] without the consent[2] of the person in lawful possession][3] [entered by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession] [remained within a building without consent of the person in lawful possession]. A "building" is a structure suitable for affording shelter for human beings, including any [adjacent] [appurtenant] or connected structure. [The entry does not have to have been made by force or by breaking in; entry through an open or unlocked door or window is sufficient.] [Whoever enters a building that is open to the general public does so with consent, except when consent was expressly withdrawn before entry.] [The defendant need not have entered the building without the consent of the person in lawful possession, nor does it matter whether that person knows of the defendant's remaining, so long as that person does not consent to the defendant's remaining.]

Second, the defendant possessed a tool with intent to use it to gain access to money or property (when entering the building) (or) (while remaining in the building).

[1] Third, the defendant (entered) (or) (remained in) the building with intent to commit ________ [Insert Definition and Elements of alleged crime].[4] [It is not necessary that the intended crime was actually completed or attempted, but it is necessary that the defendant had the intent to commit that crime at the time the defendant (entered) (or) (remained in) the building.

17.09

[1] Building and shelter defined, see M.S.A. § 609.581, subds. 2 and 3; CRIMJIG 17.14.

[2] To enter without "consent" also means (1) to enter by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession; (2) to remain within a building without consent of the person in lawful possession. M.S.A. § 609.581, subd. 4.

[3] Lawful possession defined, see CRIMJIGs 17.15, 17.16.

[4] State crime alleged and read CRIMJIG or statutory definition.

Whether the defendant intended to commit ________ must be determined from all the circumstances, including the manner and time of (entry) (or) (remaining in) the building, the nature of the building and its contents, any things the defendant may have had with the defendant, and all the other evidence in the case.]

[2] Third, the defendant committed the crime of ________ [Insert Definition and Elements of alleged crime][5] while in the building.

Fourth, the defendant's act took place on [or about] ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. §§ 609.581, 609.582, subd. 2.

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[5] State crime alleged and read CRIMJIG or statutory definition.

CRIMJIG 17.10

BURGLARY IN THE THIRD DEGREE—DEFINED

The statutes of Minnesota provide that whoever

[1] enters a building without the consent of the person in lawful possession,

[2] enters a building by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession,

[3] remains within a building without the consent of the person in lawful possession,

(with intent to steal) (with intent to commit a crime) (and steals while in the building) (and commits a crime while in the building), is guilty of a crime.

COMMENT

M.S.A. §§ 609.581 and 609.582, subd. 3.

CRIMJIG 17.11

BURGLARY IN THE THIRD DEGREE—ELEMENTS

The elements of burglary in the third degree are:

First, the defendant entered a building. A "building" is a structure suitable for affording shelter for human beings, including any [adjacent] [appurtenant] or connected structure.[1]

Second, the defendant [entered a building[2] without the consent[3] of the person in lawful possession][4] [entered by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession] [remained within a building without consent of the person in lawful possession]. [The entry does not have to have been made by force or by breaking in. Entry through an open or unlocked door or window is sufficient.] [Whoever enters a building while open to the general public does so with consent, except when consent was expressly withdrawn before entry.] [The defendant need not have entered the building without the consent of the person in lawful possession, nor does it matter whether that person knows of the defendant's remaining, so long as that person does not consent to the defendant's remaining in the building.]

[1] Third, the defendant (entered) (or) (remained in) the building with the intent (to steal) (to commit ________)[Insert Definition and Elements of alleged crime].[5] It is not necessary that the intended crime was actually completed or attempted, but it is necessary that the defendant had the intent to commit that crime at the time the defendant (entered) (or) (remained in)

17.11

[1] Shelter defined, see CRIMJIG 17.14; M.S.A. § 609.581, subd. 2 and 3.

[2] Building and shelter defined, see M.S.A. § 609.581, subds. 2 and 3; CRIMJIG 17.14.

[3] To enter without "consent" also means (1) to enter by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession; (2) to remain within a building without consent of the person in lawful possession. M.S.A. § 609.581, subd. 4.

[4] Lawful possession defined, see CRIMJIGs 17.15, 17.16.

[5] The crime intended must be a felony or gross misdemeanor, which is a question of law for the judge. M.S.A. § 609.582, subd. 3. State the crime alleged in the complaint. Read the CRIMJIG or statutory definition of the crime alleged.

the building. Whether ________ was intended must be determined from all the circumstances, including the manner and time of (entry) (or) (remaining in) the building, the nature of the building and its contents, any things the defendant may have had with the defendant, and all the other evidence in the case.

[2] Third, while in the building, the defendant (stole) (committed the crime of ________, [Insert Definition and Elements of alleged crime][6] which is a (felony) (gross misdemeanor)).

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. §§ 609.581, 609.582, subd. 3.

The Court of Appeals held *In the Matter of the Welfare of R.O.H.*, 444 N.W.2d 294 (Minn. App. 1989), that an 8 ft. by 10 ft. enclosed mini storage shed constituted a building for purposes of the burglary statute, even though the structure did not have any heat, air-conditioning, electricity, or plumbing.

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[6] Read CRIMJIG or statutory definition of crime alleged.

CRIMJIG 17.12

BURGLARY IN THE FOURTH DEGREE—DEFINED

The statutes of Minnesota provide that whoever

[1] Enters a building without the consent of the person in lawful possession,

[2] Enters a building by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession,

[3] Remains within a building without the consent of the person in lawful possession,

(with intent to commit a crime) (and commits a crime while in the building), is guilty of a crime.

COMMENT

M.S.A. §§ 609.581 and 609.582, subd. 4.

CRIMJIG 17.13

BURGLARY IN THE FOURTH DEGREE—ELEMENTS

The elements of burglary in the fourth degree are:

First, the structure involved in this case was a building. A "building" is a structure suitable for affording shelter for human beings, including any [adjacent] [appurtenant] or connected structure.[1]

Second, the defendant [entered a building[2] without the consent[3] of the person in lawful possession][4] [entered by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession] [remained within a building without consent of the person in lawful possession]. [The entry does not have to have been made by force or by breaking in. Entry through an open or unlocked door or window is sufficient.] [Whoever enters a building while open to the general public does so with consent, except when consent was expressly withdrawn before entry.] [The defendant need not have entered the building without the consent of the person in lawful possession, nor does it matter whether that person knows of the defendant's remaining, so long as that person does not consent to the defendant's remaining in the building.]

[1] Third, the defendant [entered] [or] [remained in] the building with the intent to commit ________. [Insert Definition and Elements of alleged crime][5] It is not necessary that the intended crime have actually been completed or attempted, but it is necessary that the defendant intended to commit that crime

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17.13

[1] Shelter defined, see CRIMJIG 17.14; M.S.A. § 609.581, subd. 2 and 3.

[2] Building and shelter defined, see CRIMJIG 17.14; M.S.A. § 609.581, subds. 2 and 3.

[3] To enter without "consent" also means (1) to enter by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession; (2) to remain within a building without consent of the person in lawful possession. M.S.A. § 609.581, subd. 4.

[4] Lawful possession defined, see CRIMJIGs 17.15, 17.16.

[5] The intended crime must be a misdemeanor other than to steal, which is a question of law for the judge. State the crime alleged in the complaint. Read the CRIMJIG or statutory definition of the crime alleged.

at the time the defendant [entered] [or] [remained in] the building. Whether the defendant intended to commit ________ must be determined from all the circumstances, including the manner and time of [entry] [or] [remaining in] the building, the nature of the building and its contents, any things the defendant may have had with the defendant, and all the other evidence in the case.

[2] Third, the defendant, while in the building, committed the crime of ________, [Insert Definition and Elements of alleged crime][6] which is a misdemeanor other than to steal.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. §§ 609.581 and 609.582, subd. 4.

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[6] The crime must be a misdemeanor other than to steal, which is a question of law for the judge. State the crime alleged in the complaint. Read the CRIMJIG or the statutory definition of the crime alleged.

CRIMJIG 17.14

STRUCTURE SUITABLE FOR AFFORDING SHELTER—DEFINED

A structure may be found suitable for affording shelter for human beings, even though it is not designed or intended primarily for the purpose of providing human shelter. However, it is not enough that a person could possibly take shelter in the structure. The structure must be adapted to use as an ordinary shelter for human beings.

COMMENT

M.S.A. § 609.581, subd. 2.

This definition should be used only when there is a question whether the structure concerned fits the statutory definition of a building. If there is no doubt that the building is within the statutory definition, the term need not be further defined. *State v. Shore*, 289 Minn. 302, 183 N.W.2d 776 (1971). A tool shed may be a building. *In the Matter of Welfare of R.O.H.*, 444 N.W.2d 294 (Minn. App. 1989). A motor home can be a building. *State v. Hofmann*, 549 N.W.2d 372 (Minn. App. 1996)

See also State v. Shore, supra; *State v. Gerou*, 283 Minn. 298, 168 N.W.2d 15 (1969); *State ex rel. Webber v. Tahash*, 277 Minn. 302, 152 N.W.2d 497 (1967).

CRIMJIG 17.15

PERSON IN LAWFUL POSSESSION—DEFINED

A person is in lawful possession when the person owns the building or has been given the right to control or occupy the building by the owner. Such a person is in lawful possession of the building, although the person is not physically present at the time of the entry. [An owner can divest himself or herself of the right to lawful possession of the building through an agreement with a co-owner.]

COMMENT

An order for protection requiring defendant to vacate the marital home and not return did not affect ownership, but did deprive defendant of "lawful possession." *State v. Evenson*, 554 N.W.2d 409 (Minn. App. 1996).

An owner can divest himself or herself of the right to lawful possession of the building through an agreement with a co-owner. *State v. Spence*, 768 N.W.2d 104 (Minn. 2009).

CRIMJIG 17.16

PERSON IN LAWFUL POSSESSION—MULTIPLE OWNERSHIP

[1] When a building is divided into separate parts, and different persons are the lawful possessors of different parts, a person commits burglary when the person (enters) (or) (remains in) any part without the consent of the person who is in lawful possession of that part.

[2] When several persons are in lawful possession of a building or of the same part of a building, any one of these persons may consent to the entry or remaining of another person.

An owner can divest himself or herself of the right to lawful possession of the building through an agreement with (his) (her) co-owner(s).

COMMENT

See State v. Hall, 286 Minn. 424, 176 N.W.2d 254 (1970).

An owner can divest himself or herself of the right to lawful possession of the building through an agreement with a co-owner. *State v. Spence*, 768 N.W.2d 104 (Minn. 2009).

CRIMJIG 17.17

IMPOSSIBILITY OF COMMITTING CRIME

If the defendant had the intent to commit a crime when the defendant entered the building, it is not a defense that it would have been impossible to commit the crime because the (property) (person) that was the object of the crime was not present in the building.

COMMENT

See *State v. Crosby*, 277 Minn. 22, 151 N.W.2d 297 (1967).

CRIMJIG 17.18

POSSESSION OF BURGLARY TOOLS—DEFINED

Under Minnesota law, whoever has in possession any device, explosive, or other instrumentality with intent to use or permit the use of the same to commit (burglary) (theft) is guilty of a crime.

COMMENT

M.S.A. § 609.59.

CRIMJIG 17.19

POSSESSION OF BURGLARY TOOLS—ELEMENTS

The elements of the possession of burglary tools are:

First, the defendant had in possession (________) (an explosive)[1] (or) (an instrumentality designed for or suited to obtaining access to a building in which money or property may be kept).

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (an item) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the item) at a given time. A person is in constructive possession of ________ (an item) if ________ (the item) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________[2] (the item). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (an item), possession is exclusive. If two or more persons share actual or constructive possession of ________ (an item), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the item), whether exclusively or jointly with others.

Second, the defendant had the intent to use (or permit the

17.19

[1] For definition of explosive, see CRIMJIG 18.18.

[2] In State v. Hunter, __N.W.2d __ (Minn. App 2015) the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

use of) the (________) (explosive) (instrumentality) to commit a burglary. [Insert Definition and Elements of charged burglary][3] It is not necessary that the defendant had a particular building in mind, so long as the defendant intended to use (or permit the use of) the (________) (explosive) (instrumentality) to gain access to a building or to property within it. In determining the defendant's intent, you may consider all the circumstances, the nature and character of the (________) (explosive) (instrumentality), the manner in which it was kept, the (quantity) (or) (number) in the defendant's possession, the time and place of the defendant's possession, and all of the other evidence in this case.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.59.

State v. Valstad, 282 Minn. 301, 165 N.W.2d 19 (1969) established that defendant need not have a particular building in mind.

The term "possession" frequently is interpreted to include constructive possession as well as physical possession. It is unclear whether this is the case with the possession of burglary tools. There may be cases in which a person does not have burglary tools on the person or within reach in which possession might be charged.

It is error to charge a jury that a presumption of intent to commit a crime arises from the possession of burglary tools. *State v. Valstad*, supra; *State v. Edwards*, 269 Minn. 343, 130 N.W.2d 623 (1964).

See also State v. Spangler, 278 Minn. 190, 153 N.W.2d 278 (1967).

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[3] Use the appropriate CRIMJIG to define a burglary.

CRIMJIG 17.20

POSSESSION OF THEFT TOOLS—ELEMENTS

COMMENT

Instructions on "Possession of Theft Tools" are contained in Chapter 16. *See* CRIMJIGS 16.96 and 16.97 for appropriate instructions.

CRIMJIG 17.21

TRESPASSING—DEFINED

Under Minnesota law, whoever intentionally

[1] trespasses upon the premises of another and, without claim of right, refuses to depart from the premises on demand of the lawful possessor thereof,

[2] occupies or enters the dwelling of another, without (claim of right) (consent of the owner) (the consent of one who has the right to give consent), except in an emergency situation,

[3] trespasses upon the grounds of a facility providing (emergency shelter services for battered women) (transitional housing for battered women and their children), without claim of right or consent of one who has right to give consent, and refuses to depart from the grounds of the facility on demand of one who has right to give consent,

is guilty of a crime.

COMMENT

M.S.A. § 609.605, subd. 1(b)(3), (4), and subd. 2.

For a statutory definition of "emergency," see M.S.A. § 12.03, subd. 3.

The "emergency doctrine" is set forth in *Johnson v. Townsend*, 195 Minn. 107, 261 N.W. 859 (1935). The civil case law authority prevents one who, through his or her own fault, created the emergency or failed to use the care to avoid it, from invoking the emergency doctrine. *Kachman v. Blosberg*, 251 Minn. 224, 87 N.W.2d 687 (1958). There are no cases that set forth the definition of emergency situations in the context of the trespassing statute.

CRIMJIG 17.22

TRESPASSING—ELEMENTS

The elements of trespassing are:

[1] First, the defendant intentionally trespassed upon the premises of another.

Second, the defendant refused to depart from the premises upon the demand of the lawful possessor.

Third, the defendant acted without claim of right.

[2] First, the defendant intentionally (occupied) (entered) the dwelling of another. "Dwelling" means a building or part of a building used by an individual as a place of residence on either a full-time or a part-time basis. [The dwelling may be part of a multi-dwelling or multi-purpose building, or a manufactured home.]

Second, the defendant acted without (claim of right) (consent of the owner) (the consent of one who had the right to give consent).

Third, the defendant was in a non-emergency situation.

[3] First, the defendant intentionally trespassed upon the grounds of a facility providing (emergency shelter service for battered women) (transitional housing for battered women and their children).

Second, the defendant acted without (claim of right) (consent of the owner) (the consent of one who had the right to give consent).

Third, the defendant refused to depart from the grounds of the facility on demand of one who had the right to give consent.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

In [2], the bracketed portion of the first element need only be read when a multi-dwelling, multi-purpose building, or manufactured home is involved. A "manufactured home" is defined in M.S.A. § 168.011, subd. 8.

Under M.S.A. § 609.605, subd. 1(b)(3), (5), that the defendant acted without "claim of right" is an essential element of the State's case, rather than a defense to the charge. Once the State presents evidence that the defendant acted without claim of right, the defendant may raise a reasonable doubt as to criminal intent by establishing that he or she acted with claim of right. The jury must then decide the sufficiency of the evidence as to claim of right. *State v. Brechon*, 352 N.W.2d 745 (Minn. 1984).

"Claim of right" is not defined within the trespassing instruction, but it is recommended that the trial judge do so if claim of right is in dispute. "Claim of right" may be defined as:

> [1] a bona fide claim by the defendant of title to or ownership of the premises; or
>
> [2] a bona fide claim by the defendant or expression of limited permission given the defendant by the lawful possessor of the premises, or someone authorized by the lawful possessor to give such permission; or
>
> [3] a bona fide claim by the defendant that permission is given to the defendant to be upon the premises by a statute, rule, or regulation duly promulgated by a federal or state agency.

State v. Hoyt, 304 N.W.2d 884 (Minn.1981); *State v. Paige*, 256 N.W.2d 298 (Minn.1977).

The jury should be instructed as follows:

> A bona fide claim of right exists only when the defendant is acting in good faith, as opposed to asserting a false claim. In order to find the defendant had a bona fide claim of right, you must find that the defendant believed he or she had a right to enter, and there were reasonable grounds for such belief.

State v. Hoyt, supra; *State v. Quinnell*, 277 Minn. 63, 151 N.W.2d 598 (1967).

The facts may also warrant instructing the jury that the demand to depart from the premises need not have been made directly by the lawful possessor of the premises, but it may have been made by any person authorized by the lawful possessor of the premises to convey such information to the defendant. *State v. Quinnell*, *supra*.

In addition to the means set forth in the above jury instruction by which criminal trespass can be committed, M.S.A. § 609.605 has numerous other offenses not included in this jury instruction guide because of their infrequent use.

In *State v. Rein*, 477 N.W.2d 716 (Minn. App. 1991), the Court of Appeals held that the defendant abortion protestors, convicted of trespass after jury trial, were not entitled to an instruction on the defense of necessity.

CRIMJIG 17.23

TRESPASS ON SCHOOL PROPERTY—DEFINED

Under Minnesota law, whoever enters or is found in a public or nonpublic elementary, middle, or secondary school building, and

[1] who is not enrolled as a student

[2] who is not a parent or guardian of an enrolled student

[3] who is not an employee of the school or school district

[4] who does not have permission or an invitation from a school official to be in the building

[5] who is not attending a school event, class, or meeting to which the person, the public, or the student's family is invited, or

[6] who has not reported his or her presence in the school building as required for visitors to the school

is guilty of a crime.

COMMENT

M.S.A. § 609.605, subd. 4(a).

CRIMJIG 17.24

TRESPASS ON SCHOOL PROPERTY—ELEMENTS

The elements of trespassing on school property are:

First, the defendant entered into or was found in (________) (a public or non-public elementary, middle, or secondary school building).

Second, the defendant (was not enrolled as a student in the school) (was not a parent or guardian of a presently enrolled student) (was not an employee of the school or school district) (did not have permission or an invitation from a school official to be in the building) (was not attending a school event, class, or meeting to which the defendant, the public, or the student's family was invited) (did not report the defendant's presence in the school building in the manner required for visitors to the school).

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant guilty, there is an additional issue that you must decide, and it will be put to you in the form of a question on the verdict form. The question is: At the time of the trespass, was the defendant in a group of three or more persons? You should answer the question "yes" or "no." If you have a reasonable doubt as to the answer, you should answer the question "no."]

COMMENT

The bracketed language should be used in a prosecution under M.S.A. § 609.605, subd. 4(b).

CRIMJIG 17.25

RETURN TO SCHOOL PROPERTY—DEFINED

Under Minnesota law, whoever enters or is found on school property within six months after being told by the school principal or the principal's designee to leave the property and not to return, unless the principal or the principal's designee has given the person permission to return to the property, is guilty of a crime.

COMMENT

M.S.A. § 609.605, subd. 4(b).

CRIMJIG 17.26

RETURN TO SCHOOL PROPERTY—ELEMENTS

The elements of return to school property are:

First, the defendant entered or was found on school property. "School property" means any property owned, leased, or controlled by a school district or an organization operating a non-public school where an elementary, middle, secondary school, secondary vocational center, or other school providing educational services in grade 1 through grade 12 is located, any property used for educational purposes, or any property where extra-curricular or co-curricular activities are regularly provided; and the area within a school bus when that bus is being used to transport one or more elementary or secondary school students.

Second, within the prior six months, the defendant had been told by the school principal or the principal's designee to leave the property and not to return to it.

Third, the principal or the principal's designee did not give the defendant permission to return to the property.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

The definition of school property under the statute is the definition found in M.S.A. § 152.01, subd. 14(a), clauses (1) and (3).

CRIMJIG 17.27

INTERFERENCE WITH ACCESS TO HEALTH CARE—DEFINED

Under Minnesota law, whoever intentionally and physically obstructs any individual's access to or egress from a health care facility is guilty of a crime.

COMMENT

M.S.A. § 609.7495.

CRIMJIG 17.28

INTERFERENCE WITH ACCESS TO HEALTH CARE—ELEMENTS

The elements of interference with access to a health care facility are:

First, the defendant physically obstructed an individual's access to or egress from a health care facility. "A health care facility" means a (hospital) (medical facility) (agency, clinic, or office operated under the direction of or under contract with the Commissioner of Health or Community Health Board) (a facility providing counseling regarding options for medical services or recovering from an addiction) (a facility providing emergency shelter services for battered women) (a facility providing transitional housing for battered women and their children) (a residential care home) (________).[1]

Second, the defendant acted intentionally in obstructing the access to or egress from the facility.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

17.28

[1] Complete meaning of facility and statutory references are found in M.S.A. § 609.7495, subd. 1(a).

CRIMJIG 17.29

INTERFERENCE WITH RELIGIOUS ESTABLISHMENT—DEFINED

Under Minnesota law, whoever intentionally and physically obstructs any individual's access to or egress from a religious establishment is guilty of a crime.

COMMENT

M.S.A. § 609.28, subd. 2.

CRIMJIG 17.30

INTERFERENCE WITH RELIGIOUS ESTABLISHMENT—ELEMENTS

The elements of interference with access to religious establishment are:

First, the defendant physically obstructed an individual's access to or egress from a religious establishment. A "religious establishment" is a building used for worship services by a religious organization and clearly identified as such by a posted sign or other means.

Second, the defendant intentionally obstructed the access to or egress from the religious establishment. This element is not satisfied if the defendant acted to exclude a person from the establishment at the request of an official of the religious organization.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.28, subd. 2.

CRIMJIG 17.31

SURREPTITIOUS INTRUSION—DEFINED

Under Minnesota law, whoever, with intent to intrude upon or interfere with the privacy of a member of the household, enters upon another's property and

> [1] surreptitiously gazes, stares, or peeps in the window or any other aperture of the house or dwelling place of another,
>
> [2] surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of the house or dwelling place of another,

is guilty of a crime.

COMMENT

M.S.A. § 609.746, subd. 1(a) and (b).

CRIMJIG 17.32

SURREPTITIOUS INTRUSION—ELEMENTS

The elements of surreptitious intrusion are:

First, the defendant entered upon the property of (__________) (another).

[1] Second, the defendant surreptitiously gazed, stared, or peeped in the window or any other aperture of the house or dwelling place of (__________) (another).

[2] Second, the defendant surreptitiously installed or used any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of the house or dwelling place of (__________) (another).

Third, the defendant acted with intent to intrude upon or interfere with the privacy of a member of the household of (__________) (another).

Fourth, the defendant's act took place on (or about) __________ in __________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of a question on the verdict form. The question is: Has the defendant previously been convicted of the crime of __________?[1] You will answer the question "yes" or "no." If you have reasonable doubt as to the answer, you will answer the question "no."]

17.32 or 609.749.

[1] A violation of M.S.A. §§ 609.746

COMMENT

M.S.A. § 609.746, subd. 1(a) and (b).

The last paragraph should be used only if the defendant is charged with a gross misdemeanor. If the defendant stipulates to the prior conviction, that information should not be presented to the jury, and the bracketed language will not be used. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

CRIMJIG 17.33

SURREPTITIOUS INTRUSION—EXPECTATION OF PRIVACY—DEFINED

Under Minnesota law, whoever, with intent to intrude upon or interfere with the privacy of the occupant,

> [1] surreptitiously gazes, stares, or peeps in the window or any other aperture of (a sleeping room in a hotel) (a tanning booth) (a place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose his or her intimate parts or the clothing covering the immediate area of the intimate parts),
>
> [2] surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of (a sleeping room in a hotel) (a tanning booth) (a place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose his or her intimate parts or the clothing covering the immediate area of the intimate parts),

is guilty of a crime.

COMMENT

M.S.A. § 609.746, subd. 1(c) and (d).

CRIMJIG 17.34

SURREPTITIOUS INTRUSION—EXPECTATION OF PRIVACY—ELEMENTS

The elements of surreptitious intrusion are:

[1] First, the defendant surreptitiously gazed, stared, or peeped in the window or any other aperture of (a sleeping room in a hotel[1]) (a tanning booth) (a place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose his or her intimate parts[2] or the clothing covering the immediate area of the intimate parts).

[2] First, the defendant surreptitiously installed or used any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of a (sleeping room in a hotel) (tanning booth) (place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose his or her intimate parts or the clothing covering the immediate area of the intimate parts).

Second, the defendant acted with intent to intrude upon or interfere with the privacy of (________) (the occupant).

[Third, the defendant previously been convicted of the crime of ________.[3]]

[Third] [Fourth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

17.34

[1] *See* M.S.A. § 327.70, subd. 3.

[2] *See* M.S.A. § 609.341, subd. 5.

[3] A violation of M.S.A. §§ 609.746 or 609.749.

COMMENT

M.S.A. § 609.746, subd. 1(c) and (d).

The bracketed third element should be used only if the defendant is charged with a gross misdemeanor violation of the statute. If the defendant stipulates to the prior conviction, that information should not be presented to the jury, and the bracketed language will not be used. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

"Aperture," within the meaning of the statute prohibiting interference with privacy, is simply a space through which an offender obtains a view into that place where a reasonable person has an expectation of privacy. *State v. Ulmer*, 719 N.W.2d 213 (Minn. App. 2006). In this case, the court found that a person who surreptitiously gazes, stares, or peeps over a partition in a public restroom with the intent to intrude upon or interfere with the privacy of another person is guilty of interference with privacy,

CRIMJIG 17.35

DEFENSE TO SURREPTITIOUS INTRUSION

It is a defense to a prosecution for surreptitious intrusion that the defendant's conduct was in a (medical facility) (commercial establishment, if the owner of the establishment has posted conspicuous signs warning that the premises are under surveillance by the owner or the owner's employees). The burden of proof is on the State to prove that the defendant's conduct was not at such (a facility) (an establishment).

COMMENT

M.S.A. § 609.746, subd. 1(f).

Note that the statute does not apply to law enforcement officers or correctional investigators.

CRIMJIG 17.36

BURGLARY IN THE SECOND DEGREE—GOVERNMENT BUILDING, RELIGIOUS ESTABLISHMENT, HISTORIC PROPERTY, SCHOOL BUILDING—DEFINED

Under Minnesota law, whoever enters a (government building) (religious establishment) (historic property) (school building)

> [1] without consent and with intent to commit a crime of (theft) (criminal damage to property)
>
> [2] without consent and commits a crime of (theft) (criminal damage to property) while in the building, (either directly or as an accomplice)

is guilty of a crime.

COMMENT

M.S.A. 609.582, subd. 2(b)

CRIMJIG 17.37

BURGLARY IN THE SECOND DEGREE—GOVERNMENT BUILDING, RELIGIOUS ESTABLISHMENT, HISTORIC PROPERTY, SCHOOL BUILDING—ELEMENTS

The elements of burglary in the second degree are:

First, the defendant entered a (government building) (religious establishment) (historic property) (school building). ["Government building" means a building that is owned, leased, controlled or operated by a governmental entity for a governmental purpose.] ["Religious establishment" means a building used for worship services by a religious organization and clearly identified as such by a posted sign or other means.] ["Historic property" means any property identified as a historic site or historic place by (law) and clearly identified as such by a posted sign or other means] ["School building" means a public or private preschool, elementary school, middle school, secondary school, or postsecondary school.]

[1] Second, the defendant entered without consent. "Entered a building without consent" means defendant [entered the building without the consent of the person in lawful possession][1] [entered by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession] [remained within the building without consent of the person in lawful possession].

Third, the defendant entered with intent to commit the crime of (theft) (criminal damage to property). [Insert Definition and Elements of alleged crime.]

[2] Second, the defendant entered without consent. "Entered a building without consent" means defendant [entered the dwelling without the consent of the person in lawful posses-

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17.37

[1] For definition of lawful possession see CRIMJIGs 17.15 and 17.16.

sion][2] [entered by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession] [remained within a building without consent of the person in lawful possession].

Third, defendant committed a crime of (theft) (criminal damage to property) while in the building, (either directly or as an accomplice). [Insert Definition and Elements of alleged crime.]

Fourth, the defendant's act took place on or about ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

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[2] For definition of lawful possession see CRIMJIGs 17.15 and 17.16.

CRIMJIG 17.38

TRESPASSING UPON PUBLIC SERVICE PROPERTY—DEFINED

Under Minnesota law, whoever (enters) (or) (is found upon) property containing a critical public service facility, utility, or pipeline, without (claim of right) (or) (consent of one who has the right to give consent to be on the property) is guilty of a crime if:

[1] the person refuses to depart from the property on the demand of one who has the right to give consent.

[2] within the past six months, the person had been told by one who had the right to give consent to leave the property and not to return, unless a person with the right to give consent has given the person permission to return.

[3] the property is posted.

COMMENT

M.S.A. § 609.6055, subd. 2

CRIMJIG 17.39

TRESPASSING UPON PUBLIC SERVICE PROPERTY—ELEMENTS

The elements of trespassing upon public service property are:

First, the defendant (entered) (or) (was found upon) property containing a critical public service facility, utility, or pipeline.

["Critical public service facility" includes buildings and other physical structures, and fenced in or otherwise enclosed property, of railroad yards and stations, bus stations, airports, and other mass transit facilities; oil refineries; and storage areas or facilities for hazardous materials, hazardous substances, or hazardous wastes. The term also includes nonpublic portions of bridges. The term does not include railroad tracks extending beyond a critical public service facility.]

["Pipeline" includes an aboveground pipeline, a belowground pipeline housed in an underground structure, and any equipment, facility, or building located in this state that is used to transport natural or synthetic gas, crude petroleum or petroleum fuels or oil or their derivatives, or hazardous liquids, to or within a distribution, refining, manufacturing, or storage facility that is located inside or outside of this state. Pipeline does not include service lines.]

["Utility" includes:

(1) any organization (defined as a utility in section 216C.06, subdivision 18).

(2) any telecommunications carrier or telephone company regulated under chapter 237

(3) any local utility or enterprise formed for the purpose of providing electrical or gas heating and power, telephone, water, sewage, wastewater, or other related

utility service, which is owned, controlled, or regulated by a town, a statutory or home rule charter city, a county, a port development authority, the Metropolitan Council, a district heating authority, a regional commission or other regional government unit, or a combination of these governmental units.

The term does not include property located above buried power or telecommunications lines or property located below suspended power or telecommunications lines, unless the property is fenced in or otherwise enclosed.]

["Utility line" includes power, telecommunications, and transmissions lines as well as related equipment owned or controlled by a utility.]

Second, the defendant (entered) or (was found upon) the property without (claim of right) (or) (consent of one who has the right to give consent to be on the property).

Third,

[A] the defendant refused to depart from the property on the demand of one who has the right to give consent.

[B] the defendant had been told by one who had the right to give consent to leave the property and not to return within the past six months, unless a person with the right to give consent has given the person permission to return.

[C] the property is posted.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 17.40

TRESPASSING UPON PUBLIC SERVICE PROPERTY—UNDERGROUND STRUCTURE—DEFINED

Under Minnesota law, whoever enters an underground structure that contains a utility line or pipeline that is not open to the public for pedestrian use, without claim of right or consent of one who has the right to give consent to be in the underground structure, is guilty of a crime.

COMMENT

M.S.A. § 609.6055, subd. 2(b)

CRIMJIG 17.41

TRESPASSING UPON PUBLIC SERVICE PROPERTY—UNDERGROUND STRUCTURE—ELEMENTS

The elements of trespassing upon a public service property underground structure are:

First, the defendant entered an underground structure that contains a utility line or pipeline.

> ["Pipeline" means a belowground pipeline housed in an underground structure that is used to transport natural or synthetic gas, crude petroleum or petroleum fuels or oil or their derivatives, or hazardous liquids, to or within a distribution, refining, manufacturing, or storage facility that is located inside or outside of this state. Pipeline does not include service lines.]
>
> ["Utility line" includes power, telecommunications, and transmissions lines as well as related equipment owned or controlled by a utility.]
>
> ["Utility" includes:
>
> (1) any organization (defined as a utility in section 216C.06, subdivision 18).
>
> (2) any telecommunications carrier or telephone company regulated under chapter 237
>
> (3) any local utility or enterprise formed for the purpose of providing electrical or gas heating and power, telephone, water, sewage, wastewater, or other related utility service, which is owned, controlled, or regulated by a town, a statutory or home rule charter city, a county, a port development authority, the Metropolitan Council, a district heating authority, a regional commission or other regional government unit, or a combination of these governmental units.

The term does not include property located above buried power or telecommunications lines or property located below suspended power or telecommunications lines, unless the property is fenced in or otherwise enclosed.]

Second, the underground structure is not open to the public for pedestrian use. The underground structure does not need to be posted with signs prohibiting trespassing.

Third, the defendant entered without (claim of right) (or) (consent of one who has the right to give consent) to be in the underground structure.

Fourth, the defendant's acts took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CHAPTER 18

ARSON, AND OTHER CRIMES OF DESTRUCTION OF PROPERTY

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CRIMJIG 18.01

ARSON IN THE FIRST DEGREE—DWELLING—DEFINED

Under Minnesota law, whoever unlawfully, by means of fire or explosive, intentionally destroys or damages any building that is used as a dwelling at the time the act is committed (or any building (appurtenant to) (next to) or connected with a dwelling) (whether the property of that person or another)[1] commits arson in the first degree, whether or not an inhabitant is present therein at the time of the act.

COMMENT

M.S.A. § 609.561, subd. 1.

For arson in the first degree where the building is not a dwelling, see CRIMJIGs 18.03 and 18.04.

18.01

[1] This language should be read only if the evidence suggests that the property may have been the defendant's.

CRIMJIG 18.02

ARSON IN THE FIRST DEGREE—DWELLING—ELEMENTS

The elements of arson in the first degree are:

First, ________ was destroyed or damaged by (fire) (or) (explosive[1]). (You may find ________ to be an explosive.) It is not necessary that ________ was destroyed or seriously damaged. It is enough if there was any damage to ________ or any part of it.

Second, at the time of the alleged act, ________ was a building used as a dwelling (or was (appurtenant to) (next to) or connected with a dwelling). A "dwelling" is a building used as a permanent or temporary residence. It is not necessary that any person have been actually in the dwelling at the time of the alleged act. (A building is next to a dwelling within the meaning of this element only if it is so situated that a fire or explosion there would threaten the dwelling.)

Third, the defendant (or another for whose act the defendant is liable) caused the (fire) (or) (explosion).

Fourth, the defendant intended to destroy or damage the building. This means that the defendant acted with the purpose of destroying or damaging the building, or with the belief that the act would cause the building to be destroyed or damaged.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

18.02

[1] *See* CRIMJIG 18.18 and Minnesota Rules, parts 7500.0100 *et seq.* for definition of explosive.

COMMENT

M.S.A. § 609.561, subd. 1.

In the first element, when damage or destruction by explosive without fire is charged, the following may be added: “If the property was destroyed or damaged by explosive, it is not necessary that there have been any fire.” This may be desirable because of the popular conception that arson involves fire.

If the evidence would support a finding that the property involved belonged to the defendant, the following should be added to the first element: “It does not matter that the building belonged to the defendant.” The statute does not require any particular degree of damage, and there is no reason to suppose the damage must be substantial. Therefore no qualification is put on the term in this instruction. When the damage is very minor, however, a charge on attempt (CRIMJIGs 5.01 and 5.02) may also be given.

In the second element, the definition of “dwelling” is adopted from M.S.A. § 609.581, subd. 3. The statute uses the word “appurtenant” where the instruction uses the term “next to.” The statutory term is not defined. It seems clear that a building should be found “appurtenant” or “next to” a dwelling only if a fire or explosion there would threaten destruction or damage to the dwelling. “Building” has not been defined in this instruction. Where a special meaning of the term, as defined in M.S.A. § 609.556(3), is involved, CRIMJIG 18.16 should be used.

In the third element, the parenthetical expression is included because arson frequently involves accomplices. See M.S.A. § 609.05. In such a case, the instructions regarding “Liability for Crimes of Another” (CRIMJIG 4.01) should also be given.

CRIMJIG 18.03

ARSON IN THE FIRST DEGREE—BUILDINGS OTHER THAN DWELLINGS—DEFINED

Under Minnesota law, whoever unlawfully, by means of fire or explosive, intentionally destroys or damages any building (that is not a dwelling or next to or connected with a dwelling)[1] (whether the property of the person or another)[2] commits a crime, if

[1] another person not participating with the defendant is present in the building at the time, and the defendant knows it.

[2] the circumstances are such as to make the presence therein of another person not participating with the defendant a reasonable possibility.

COMMENT

M.S.A. § 609.561, subd. 2.

18.03

[1] This parenthetical expression should be read only if the jury is also charged on arson of a dwelling (CRIMJIGs 18.01 and 18.02), and it is necessary to distinguish the two offenses.

[2] This language should be read only if the evidence suggests that the property may have been the defendant's.

CRIMJIG 18.04

ARSON IN THE FIRST DEGREE—BUILDINGS OTHER THAN DWELLINGS—ELEMENTS

The elements of arson in the first degree are:

First, ________ was destroyed or damaged by (fire) (or) (explosive[1]). (You may find ________ was an explosive.) It is not necessary that the ________ was destroyed or seriously damaged. It is enough if there was damage to the ________ or any part of it.

Second, the defendant (or another for whose act the defendant is liable) caused the (fire) (or) (explosion).

Third, the defendant intended to destroy or damage the building. This means that the defendant acted with the purpose of destroying or damaging the building, or with the belief that the act would cause the building to be destroyed or damaged.

[1] Fourth, the defendant knew that (________) (another person) was present in the building at the time.

Fifth, (________) (the other person) was not participating in the defendant's act.

[2] Fourth, the circumstances were such as to make the presence of another person who was not a participant in the crime a reasonable possibility. It is not necessary in such a case that any person was actually in the building.

[Fifth] [Sixth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable

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18.04

[1] *See* CRIMJIG 18.18 and Minnesota Rules, parts 7500.0100 *et seq.* for definition of explosive.

doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.561, subd. 2.

See also Comment to CRIMJIG 18.02.

In the second alternative of the fourth element, it is not entirely clear from the statute whether the actual presence of a person in the building is required. The clearest explanation for the presence of the two alternatives is that the first covers the case when the presence of a person might not reasonably be expected, but the defendant knows one is there, and the second covers the case when the presence of such a person is reasonably to be expected. If this explanation is correct, the presence of a person in the second alternative seems unnecessary to the statutory objective.

CRIMJIG 18.05

ARSON IN THE FIRST DEGREE—FLAMMABLE OR COMBUSTIBLE LIQUIDS—DEFINED

Under Minnesota law, whoever unlawfully, by means of fire or explosive, intentionally destroys or damages any building (that is not a dwelling or next to or connected with a dwelling)[1] (whether the property of the person or another)[2] commits arson in the first degree, if a combustible or flammable liquid is used to start or accelerate the fire.

COMMENT

M.S.A. § 609.561, subd. 3.

18.05

[1] This parenthetical expression should be read only if the jury is also charged on arson of a dwelling (CRIMJIGs 18.01 and 18.02) and it is necessary to distinguish the two offenses.

[2] This language should be read only if the evidence suggests that the property may have been the defendant's.

CRIMJIG 18.06

ARSON IN THE FIRST DEGREE—FLAMMABLE OR COMBUSTIBLE LIQUIDS—ELEMENTS

The elements of arson in the first degree are:

First, ________ was destroyed or damaged by (fire) (or) (explosive[1]). (You may find ________ was an explosive.) It is not necessary that the ________ was destroyed or seriously damaged. It is enough if there was damage to the ________ or any part of it. [It does not matter if the property was owned by the defendant or another.]

Second, the defendant (or another for whose act the defendant is liable) caused the (fire) (or) (explosion).

Third, the defendant intended to destroy or damage the building. This means that the defendant acted with the purpose of destroying or damaging the building, or with the belief that the act would cause the building to be destroyed or damaged.

Fourth, a flammable or combustible liquid was used to start or accelerate the fire. A "flammable liquid" means any liquid having a flash point below one hundred degrees Fahrenheit, and having a vapor pressure not exceeding forty pounds per square inch (absolute) at one hundred degrees Fahrenheit, but does not include intoxicating liquor. "Combustible liquid" means a liquid having a flash point at or above one hundred degrees Fahrenheit.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

18.06

[1] *See* CRIMJIG 18.18 and Minnesota Rules, parts 7500.0100 *et seq.* for definition of explosive.

COMMENT

M.S.A. § 609.561, subd. 3.

CRIMJIG 18.07

ARSON IN THE SECOND DEGREE—DEFINED

Under Minnesota law, whoever unlawfully, by means of fire or explosive, intentionally destroys or damages any building, no matter what its value, or any other real or personal property valued at more than $1,000 (whether the property of the defendant or another), is guilty of a crime.

COMMENT

M.S.A. § 609.562.

Unless this crime is charged as a lesser-included offense, nothing need be said about the building not being covered by M.S.A. § 609.561, since it would not be a defense that the building was so covered.

CRIMJIG 18.08

ARSON IN THE SECOND DEGREE—ELEMENTS

The elements of arson in the second degree are:

First, the ________ (building) (property) was destroyed or damaged by (fire) (or) (explosive[1]). It is not necessary that the ________ (building) (property) was destroyed or seriously damaged. It is enough if there was damage to the ________ or any part of it.

Second, the defendant (or another for whose act the defendant is liable) caused the fire or explosion.

Third, the defendant intended to destroy or damage the ________(building) (property). This means that the defendant acted with the purpose of destroying or damaging the ________, or with the belief that the act would cause the ________ (building) (property) to be destroyed or damaged.

[1] Fourth, the ________ was a building.

[2] Fourth, the ________ (property) had a value of more than $1,000.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

18.08

[1] *See* CRIMJIG 18.18 and Minnesota Rules, parts 7500.0100 *et seq.* for definition of explosive.

CRIMJIG 18.09

ARSON IN THE THIRD DEGREE—DEFINED

Under Minnesota law, whoever unlawfully, by means of fire or explosive, intentionally destroys or damages any real or personal property, is guilty of a crime.

COMMENT

M.S.A. § 609.563.

CRIMJIG 18.10

ARSON IN THE THIRD DEGREE—ELEMENTS

The elements of arson in the third degree are:

First, ________ was destroyed or damaged by (fire) (or) (explosive[1]). (You may find ________ was an explosive.) It is not necessary that ________ was destroyed or seriously damaged. It is enough if there was damage to the ________ or any part of it.

Second, the defendant (or another for whose act the defendant is liable) caused the fire or explosion.

Third, the defendant intended to destroy or damage ________. This means that the defendant acted with the purpose of destroying or damaging ________, or with the belief that the act would cause ________ to be destroyed or damaged.

[Fourth, while the defendant intended to destroy or damage ____, the defendant did not intend to destroy or damage property valued in excess of $300.00. However, such destruction or damage was reasonably foreseeable.]

[Fourth] [Fifth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant is guilty, you have an additional issue to determine in the form of questions that will appear on the verdict form. The questions are: Did the property intended to be destroyed or damaged have a value of more than $300 but less than $1,000? Was the combined value of the property damaged or destroyed $300 or more? You will answer each

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18.10

[1] *See* CRIMJIG 18.18 and Minnesota Rules, parts 7500.0100 *et seq.* for definition of explosive.

question "yes" or "no." If you have a reasonable doubt as to the answer, you should answer the question "no."]

COMMENT

M.S.A. § 609.563.

CRIMJIG 18.11

ARSON IN THE FOURTH DEGREE—DEFINED

Under Minnesota law, whoever unlawfully, by means of fire or explosive, intentionally sets fire to or burns, or causes to be burned, any personal property in a multiple unit residential building or public building, is guilty of a crime.

COMMENT

M.S.A. § 609.5631.

CRIMJIG 18.12

ARSON IN THE FOURTH DEGREE—ELEMENTS

The elements of arson in the fourth degree are:

First, ________ was burned by (fire) (or) (explosive[1]). It is not necessary that ________ was destroyed or seriously damaged. It is enough if there was damage to the ________ or any part of it.

Second, the defendant (or another for whose act the defendant is liable) intentionally caused the fire or explosion. This means that the defendant acted with the purpose of destroying or damaging ________ (the property), or with the belief that the act would cause ________ (the property) to be destroyed or damaged. [If act is committed by another, insert CRIMJIG 4.01 here.]

Third, the ________ was a (multiple unit residential building) (public building). (A "multiple unit residential building" is a building containing two or more apartments.) (A "public building" includes a hotel, hospital, motel, dormitory, sanitarium, nursing home, theater, stadium, gymnasium, amusement park building, school, or other building used for educational purposes, museum, restaurant, bar, correctional institution, place of worship, or other building of public assembly.)

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.5631.

18.12

[1] *See* CRIMJIG 18.18 and Minnesota Rules, parts 7500.0100 *et seq.* for definition of explosive.

CRIMJIG 18.13

ARSON IN THE FIFTH DEGREE—DEFINED

Under Minnesota law, whoever unlawfully, by means of fire or explosive, intentionally sets fire to or burns, or causes to be burned, any real or personal property, is guilty of a crime.

COMMENT

M.S.A. § 609.5632.

CRIMJIG 18.14

ARSON IN THE FIFTH DEGREE—ELEMENTS

The elements of arson in the fifth degree are:

First, ________ was burned by (fire) (or) (explosive[1]). It is not necessary that ________ was destroyed or seriously damaged. It is enough if there was damage to the ________ or any part of it.

Second, the defendant (or another for whose act the defendant is liable) intentionally (set fire to) (burned) (caused to be burned) ________ (real property) (personal property). This means that the defendant acted with the purpose of destroying or damaging ________ (the property), or with the belief that the act would cause ________ (the property) to be destroyed or damaged. [If act is committed by another, insert CRIMJIG 4.01 here.]

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.5632.

18.14

[1] *See* CRIMJIG 18.18 and Minnesota Rules, parts 7500.0100 *et seq.* for definition of explosive.

CRIMJIG 18.15

PROPERTY OF ANOTHER—DEFINED

"Property of another" includes any building or other property in which a person other than the defendant has an interest which the defendant has no authority to defeat or impair, even though the defendant also has an interest in the property. [(A mortgage) (__________) is such an interest.]

COMMENT

M.S.A. § 609.556, subd. 2.

CRIMJIG 18.16

"BUILDING"—DEFINED

"Building," in addition to its ordinary meaning, includes any tent, watercraft, structure, or vehicle that is customarily used for overnight lodging of a person or persons. (If a building consists of two or more units separately secured or occupied, each unit is a separate building.)

COMMENT

M.S.A. § 609.556, subd. 3.

CRIMJIG 18.17

POSSESSION OF (EXPLOSIVE) (BLASTING AGENT COMPONENTS)—DEFINED

Under Minnesota law, whoever possesses one or more components necessary to manufacture or assemble (explosives) (blasting agents), with the intent to manufacture or assemble (explosives) (blasting agents), and is not licensed to possess (explosives) (or) (blasting agents), is guilty of a crime.

COMMENT

M.S.A. § 299F.79.

CRIMJIG 18.18

POSSESSION OF (EXPLOSIVE) (BLASTING AGENTS) COMPONENTS—ELEMENTS

The elements of possession of (explosive) (or) (blasting agents) components are:

First, the defendant possessed one or more components necessary to manufacture or assemble (explosives[1]) (blasting agents). [A "blasting agent" means any material or mixture that consists of a fuel and oxidizer.] [An "explosive" means a chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, that is, with substantially instantaneous release of gas and heat, unless the compound, mixture, or device is otherwise specifically classified by the United States Department of Transportation. The term does not include black powder, smokeless powder, primers and fuses when used for antique or replica muzzle loading rifles, pistols, muskets, shotguns, and cannons, or when used or possessed for rifle, pistol, or shotgun ammunition or fireworks.]

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (an item) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the item) at a given time. A person is in constructive possession of ________ (an item) if ________ (the item) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________[2] (the item). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.

18.18

[1] *See* CRIMJIG 18.18 and Minnesota Rules, parts 7500.0100 *et seq.* for definition of explosive.

[2] In State v. Hunter, __N.W.2d __ (Minn. App 2015) the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (an item), possession is exclusive. If two or more persons share actual or constructive possession of ________ (an item), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the item), whether exclusively or jointly with others.]

Second, the defendant possessed the component with intent to manufacture or assemble (explosives) (blasting agents).

Third, the defendant was not licensed to possess an (explosive compound) (or) (incendiary device).

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 299F.79.

See M.S.A. § 299F.72 and Minnesota Rules 7500.0100 *et seq.* for definitions of explosives and blasting agents.

CRIMJIG 18.19

POSSESSION OF (EXPLOSIVE) (BLASTING AGENTS)—DEFINED

Under Minnesota law, whoever possesses (explosives) (blasting agents), and is not licensed to possess (explosives) (blasting agents), is guilty of a crime.

COMMENT

M.S.A. § 299F.80.

CRIMJIG 18.20

POSSESSION OF (EXPLOSIVES) (BLASTING AGENTS)—ELEMENTS

The elements of possession of (explosives) (or) (blasting agents) are:

First, the defendant possessed (explosives[1]) (blasting agents). ["A blasting agent" means any material or mixture that consists of a fuel and oxidizer.] ["An explosive" means a chemical compound, mixture or device, the primary or common purpose of which is to function by explosion, that is, with substantially instantaneous release of gas and heat unless the compound, mixture or device is otherwise specifically classified by the United States Department of Transportation. The term does not include black powder, smokeless powder, primers and fuses when used for antique or replica muzzle loading rifles, pistols, muskets, shotguns, and cannons or when used or possessed for rifle, pistol or shotgun ammunition or fireworks.]

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (an item) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the item) at a given time. A person is in constructive possession of ________ (an item) if ________ (the item) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________[2] (the item). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

18.20

[1] *See* CRIMJIG 18.18 and Minnesota Rules, parts 7500.0100 *et seq.* for definition of explosive.

[2] In State v. Hunter, __N.W.2d __ (Minn. App 2015) the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (an item), possession is exclusive. If two or more persons share actual or constructive possession of ________ (an item), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the item), whether exclusively or jointly with others.]

Second, the defendant was not licensed to possess (explosives) (blasting agents).

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant is guilty of unauthorized possession of (explosives) (blasting agents) you have an additional issue to determine in the form of questions on the verdict form. The questions are: (1) Was the (explosive) (blasting agent) possessed by the defendant commonly used for agricultural, forestry, conservation, industry or mining purposes? (2) Did the defendant intend to use the (explosive) (blasting agent) for legitimate agricultural, forestry, conservation, industry or mining purposes? (3) Was the quantity of (explosives) (blasting agents) possessed reasonably necessary for such an intended use? You will answer each question "yes" or "no." If you have a reasonable doubt as to the answer, you should answer the question "yes."][3]

COMMENT

See M.S.A. § 299F.80.

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[3] The bracketed language should be used if the court instructs the jury on M.S.A. § 299F.80, subd. 2 as a lesser included offense to a prosecution under subd. 1.

See M.S.A. § 299F.72 and Minnesota Rules 7500.0100 *et seq.* for definitions of explosives and blasting agents.

CRIMJIG 18.21

POSSESSION OF (EXPLOSIVE) (INCENDIARY DEVICE) BY PROHIBITED PERSON—DEFINED

Under Minnesota law, whoever

[1] is a person under the age of 18 years,

[2] is a person who has been convicted in this state or elsewhere of a crime of violence, unless ten years have elapsed since the person's civil rights have been restored or the sentence has expired, whichever occurs first, and during that time the person has not been convicted of any other crime of violence,

[3] is a person who is or has ever been confined or committed in Minnesota or elsewhere as a "mentally ill," "mentally retarded," or "mentally ill and dangerous to the public" person, to a treatment facility, unless the person possesses a certificate of a medical doctor or psychiatrist licensed in Minnesota, or other satisfactory proof, that the person is no longer suffering from this disability,

[4] is a person who has been convicted in Minnesota or elsewhere for the unlawful use, possession, or sale of a controlled substance other than conviction for possession of a small amount of marijuana, or who is or has ever been hospitalized or committed for treatment for the habitual use of a controlled substance or marijuana, unless the person possesses a certificate of a medical doctor or psychiatrist licensed in Minnesota, or other satisfactory proof, that the person has not abused a controlled substance or marijuana during the previous two years,

[5] is a person who has been confined or committed to a treatment facility in Minnesota or elsewhere as "chemically dependent," unless the person has completed treatment,

[6] is a peace officer who is informally admitted to a treatment facility for chemical dependency, unless the officer possesses a certificate from the head of the treatment facil-

> **ity discharging or provisionally discharging the officer from the treatment facility,**

and knowingly possesses an (explosive) (incendiary device), is guilty of a crime.

COMMENT

M.S.A. § 609.668, subd. 2.

CRIMJIG 18.22

POSSESSION OF (EXPLOSIVE) (INCENDIARY DEVICE) BY PROHIBITED PERSON—ELEMENTS

The elements of the possession of an (explosive) (incendiary device) are:

First, the defendant knowingly possessed an (explosive[1]) (incendiary device

[An "explosive device" is a device so articulated that an ignition by fire, friction, concussion, chemical reaction, or detonation of any part of the device may cause such sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects. Explosive devices include, but are not limited to, bombs, grenades, rockets having a propellant charge of more than four ounces, mines, and fireworks modified for other than their intended purpose. The term includes devices that produce a chemical reaction that produces gas capable of bursting its container and producing destructive effects. The term does not include firearms ammunition.]

[An "incendiary device" is a device so articulated that an ignition by fire, friction, concussion, detonation, or other method may produce destructive effects primarily through combustion rather than explosion. The term does not include a manufactured device or article in common use by the general public that is designed to produce combustion for a lawful purpose, including, but not limited to, matches, lighters, flares, or devices commercially manufactured primarily for the purpose of illumination, heating, or cooking. The term does not include firearms ammunition.]

Second, the defendant

[1] was a person under the age of 18 years.

18.22

[1] *See* CRIMJIG 18.18 and Minnesota Rules, parts 7500.0100 *et seq.* for definition of explosive.

[2] has been convicted in this state or elsewhere of a crime of violence unless ten years have elapsed since the defendant's civil rights have been restored or the sentence has expired, whichever occurs first, and during that time the defendant was not convicted of any other crime of violence.[2]

[3] was or has ever been confined or committed in Minnesota or elsewhere as a "mentally ill," "mentally retarded," or "mentally ill and dangerous to the public" person, to a treatment facility, unless the defendant possesses a certificate of a medical doctor or psychiatrist licensed in Minnesota, or other satisfactory proof, that the defendant is no longer suffering from the disabilities.

[4] has been convicted in Minnesota or elsewhere for the unlawful use, possession, or sale of a controlled substance other than conviction for possession of a small amount of marijuana, or was or has ever been hospitalized or committed for treatment for the habitual use of a controlled substance or marijuana, unless the defendant possesses a certificate of a medical doctor or psychiatrist licensed in Minnesota, or other satisfactory proof, that the defendant has not abused a controlled substance or marijuana during the previous two years.

[5] has been confined or committed to a treatment facility in Minnesota or elsewhere as "chemically dependent," unless the defendant has completed treatment.

[6] was a peace officer who was informally admitted to a treatment facility for chemical dependency, unless the defendant possesses a certificate from the head of the treatment facility discharging or provisionally discharging the defendant from the treatment facility.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven be-

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[2] *See* M.S.A. § 624.712, subd. 5 for the definition of a crime of violence.

yond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See State v. Davidson, 351 N.W.2d 8 (Minn. 1984), which permits the defendant to stipulate to a prior conviction, preventing the issue from going to the jury.

CRIMJIG 18.23

POSSESSION OF (EXPLOSIVE DEVICE) (INCENDIARY DEVICE) (MOLOTOV COCKTAIL)—DEFINED

Under Minnesota law, whoever (possesses) (manufactures) (transports) (stores) an (explosive device) (or) (incendiary device (sometimes referred to as a Molotov cocktail)) is guilty of a crime.

COMMENT

M.S.A. § 609.668, subd. 6.

CRIMJIG 18.24

POSSESSION OF (EXPLOSIVE DEVICE) (INCENDIARY DEVICE) (MOLOTOV COCKTAIL)—ELEMENTS

The elements of the possession of an (explosive device) (incendiary device (sometimes referred to as a Molotov cocktail)) are:

First, the defendant (possessed) (manufactured) (transported) (stored) an (explosive device) (or) (an incendiary device (sometimes referred to as a Molotov cocktail)). [An "explosive device" is a device so articulated that an ignition by fire, friction, concussion, chemical reaction, or detonation of any part of the device may cause such sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects. Explosive devices include, but are not limited to, bombs, grenades, rockets having a propellant charge of more than four ounces, mines, and fireworks modified for other than their intended purpose. The term includes devices that produce a chemical reaction that produces gas capable of bursting its container and producing destructive effects. The term does not include firearms ammunition.] [An "incendiary device" is a device so articulated that an ignition by fire, friction, concussion, detonation, or other method may produce destructive effects primarily through combustion rather than explosion. The term does not include a manufactured device or article in common use by the general public that is designed to produce combustion for a lawful purpose, including, but not limited to, matches, lighters, flares, or devices commercially manufactured primarily for the purpose of illumination, heating, or cooking. The term does not include firearms ammunition.] [A "Molotov cocktail" is any crude hand grenade made of a bottle or container filled with a flammable liquid and fitted with an ignition device.]

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (an item) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the item) at a given time. A person is in constructive possession

of ________ (an item) if ________ (the item) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________[1] (the item). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (an item), possession is exclusive. If two or more persons share actual or constructive possession of ________ (an item), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the item), whether exclusively or jointly with others.]

Second, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.668, subd. 6.

See M.S.A. § 609.668, subds. 3–5 for permitted users and statutory exceptions.

18.24

[1] In State v. Hunter, __N.W.2d __ (Minn. App 2015) the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

CRIMJIG 18.25

NEGLIGENT FIRES—DEFINED

Under Minnesota law, whoever is grossly negligent in causing a fire to burn or get out of control, is guilty of a crime if, as a result,

[1] a human being suffers great bodily harm.

[2] property of another person is damaged.

COMMENT

M.S.A. § 609.576.

CRIMJIG 18.26

NEGLIGENT FIRES—ELEMENTS

The elements of negligent fires are:

First, the defendant caused a fire to burn or to get out of control.

Second, the defendant was grossly negligent. "Gross negligence" means defendant acted with very great negligence or with the absence of even slight care.

Third, as a result of the defendant's action

[1] (________) (a human being) suffered great bodily harm. "Great bodily harm" means bodily harm that creates a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily harm.

[2] (________) (property of another) was damaged.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant is guilty, you have additional issues to determine, and they will be put to you in the form of questions on the verdict form. The questions are: Was the value of the property damage $2,500 or more? Was the value of the property damage at least $300 but under $2,500? Was the value of the property damage under $300? If you have a reasonable doubt as to the value of property damage, you should answer "yes" to the lesser of the values you believe it had.]

COMMENT

M.S.A. § 609.576.

The definition of "gross negligence" is drawn from *State v. Hegstrom*, 543 N.W.2d 698 (Minn. App. 1996). *See also State v. Kissner*, 541 N.W.2d 317 (Minn. App. 1995).

In the statute, the reference to value in clause (b)(1) is to "the value of the property damage," and in subdivisions (b)(2) and (b)(3), the reference is to "the value of the property damaged." The Committee believes that the difference is without significance, and that the intention was that the extent of the damage, rather than the value of the overall property, should control the penalty.

The bracketed paragraph will not be used if the charge relates only to causing great bodily harm to another.

CRIMJIG 18.27

CRIMINAL DAMAGE TO PROPERTY—FIRST DEGREE—DEFINED

Under Minnesota law, whoever intentionally causes damage to physical property of another without the other's consent is guilty of a crime.

COMMENT

M.S.A. § 609.595.

CRIMJIG 18.28

CRIMINAL DAMAGE TO PROPERTY—ELEMENTS

The elements of damage to property are:

First, the defendant intentionally caused damage to ________.

Second, the ________ was the property of (________) (another).

Third, ________ (the other person) did not consent to the damaging of the property.

[1] Fourth, the damage to ____ created a reasonably foreseeable risk of bodily harm. "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition. It is not necessary that bodily harm resulted, only that a reasonably foreseeable risk of such harm was created.]

[2] Fourth, ________ belonged to a (public utility) (common carrier). ________ is a (public utility) (common carrier).

Fifth, the damage impaired ________'s service to the public.]

[3] Fourth, the damage reduced the value of the property by more than $1,000 as measured by the cost of repair and replacement.]

[4] Fourth, the damage reduced the value of the property by more than $500 as measured by the cost of repair and replacement.

Fifth, the defendant has been convicted[1] within the preceding three years of an offense [one of the offenses under M.S.A. 609.595, subd. 1 or subd. 2]

18.28

[1] Under *State v. Davidson*, 351 N.W.2d 8 (1984), the defendant may stipulate to a prior conviction, preventing the issue from going to the jury. In such case, the fifth element would not be given.

[5] Fourth, the value of the property damaged within any six-month period was reduced by more than $1,000 as measured by the cost of repair and replacement.

[6] Fourth, the value of the property damaged within any six-month period was reduced by more than $500 as measured by the cost of repair and replacement.

Fifth, the defendant has been convicted[2] within the preceding three years of an offense [one of the offenses under M.S.A. 609.595, subd. 1 or subd. 2]

[Fifth] [Sixth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.595.

See State v. Davidson, 351 N.W.2d 8 (1984), which permits the defendant to stipulate to a prior conviction, preventing the issue from going to the jury.

See also State v. Pratt, 277 Minn. 363, 152 N.W.2d 510 (1967).

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[2] Under *State v. Davidson*, 351 N.W.2d 8 (1984), the defendant may stipulate to a prior conviction, preventing the issue from going to the jury. In such case, the fifth element would not be given.

CRIMJIG 18.29

CRIMINAL DAMAGE TO PROPERTY—SECOND DEGREE AND THIRD DEGREE—DEFINED

Under Minnesota law, whoever intentionally causes damage to physical property of another without the other's consent [and does so because of the property owner's actual or perceived (race) (color) (religion) (sex) (sexual orientation) (disability) (age) (national origin) is guilty of a crime.

COMMENT

M.S.A. § 609.595, subd. 1a and subd. 2.

CRIMJIG 18.30

CRIMINAL DAMAGE TO PROPERTY—SECOND DEGREE AND THIRD DEGREE—ELEMENTS

The elements of damage to property are:

First, the defendant intentionally caused damage to ________.

Second, the ________ was the property of (________) (another).

Third, ________ (the other person) did not consent to the damaging of the property.

Fourth, the damage reduced the value of the property by more than $500 but less than $1000 as measured by the cost of repair and replacement.

[Fifth, the defendant caused the damage because of the property owner's actual or perceived (race) (color) (religion) (sex) (sexual orientation) (disability) (age) (national origin).

[Fifth] [Sixth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.595, subd. 1a and subd. 2.

See State v. Davidson, 351 N.W.2d 8 (1984), which permits the defendant to stipulate to a prior conviction, preventing the issue from going to the jury.

See also State v. Pratt, 277 Minn. 363, 152 N.W.2d 510 (1967).

CRIMJIG 18.31

DANGEROUS SMOKING—DEFINED

Under Minnesota law, whoever smokes in the presence of (explosives) (flammable materials) [and knows that doing so creates a risk of death or bodily harm or serious property damage] is guilty of a crime.

COMMENT

M.S.A. § 609.576, subd. 2.

CRIMJIG 18.32

DANGEROUS SMOKING—ELEMENTS

The elements of dangerous smoking are:

First, the defendant smoked in the presence of (explosives) (flammable materials).

[Second, the defendant knew that doing so created a risk of death or bodily harm or serious property damage. "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.]

[Second] [Third], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of a question on the verdict form. The question is: Did the defendant know the defendant's conduct created a risk of death or bodily harm, or serious property damage? You will answer the question "yes" or "no." If you have a reasonable doubt as to the answer, you should answer the question "no."

CRIMJIG 18.33

FALSE TRAFFIC SIGNAL—DEFINED

Under Minnesota law, whoever exhibits a false light or signal, or interferes with a light, signal, or sign controlling or guiding traffic on a highway, railroad track, or navigable waters, or in the air, [and knows that doing so creates a risk of death or bodily harm or serious property damage] is guilty of a crime.

COMMENT

M.S.A. § 609.851.

CRIMJIG 18.34

FALSE TRAFFIC SIGNAL—ELEMENTS

The elements of false traffic signal are:

[1] First, the defendant exhibited a false light or signal.

[2] First, the defendant interfered with a light, signal, or sign.

Second, the light, signal, or sign controlled or guided traffic (on a highway) (on a railroad track) (on navigable waters) (in the air).

[Third, the defendant knew that doing so would create the risk of death, bodily harm, or serious property damage. "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.]

[Third] [Fourth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 18.35

WILDFIRE ARSON—DEFINED

Under Minnesota law, whoever intentionally sets a fire to burn out of control on land of another containing timber, underbrush, grass, or other vegetative combustible material, is guilty of a crime.

COMMENT

M.S.A. § 609.5641, subd. 1.

CRIMJIG 18.36

WILDFIRE ARSON—ELEMENTS

The elements of wildfire arson are:

First, the defendant intentionally set a fire.

Second, the defendant intended the fire to burn out of control on the land of (________)[1] (another).

Third, the land contained (timber) (underbrush) (grass) (vegetative combustible material).

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

18.36

[1] The owner or person with legal interest in the real property.

CRIMJIG 18.37

POSSESSION OF (FLAMMABLES, ETC.) TO SET WILDFIRES—DEFINED

The statutes of Minnesota provide that whoever possesses a (flammable) (explosive) (incendiary) (device) (substance) (material) with intent to use the (device) (substance) (material) to set a fire to burn out of control on land of another containing (timber) (underbrush) (grass) (vegetative combustible material), is guilty of a crime.

COMMENT

M.S.A. § 609.5641, subd. 2

CRIMJIG 18.38

POSSESSION OF (FLAMMABLES, ETC.) TO SET WILDFIRES—ELEMENTS

The elements of possession of flammables to set wildfires are:

First, the defendant possessed ________, which is a (flammable) (explosive) (incendiary) (device) (substance) (material).

Second, the defendant possessed the ________ with the intent to set a fire to burn out of control on the land of (________)[1] (another).

Third, that land contained (timber) (underbrush) (grass) (vegetative combustible material).

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

18.38

[1] The owner or person with legal interest in the real property.

CRIMJIG 18.39

DAMAGE TO TIMBER PROCESSING—DEFINED

Under Minnesota law, whoever, without claim of right or consent of the owner, drives, places, or fastens in any timber, any device of (iron) (steel) (ceramic) (or) (other substance sufficiently hard to damage saws or wood processing or manufacturing equipment) with the intent to hinder the logging or processing of timber, is guilty of a crime.

COMMENT

M.S.A. § 609.591, subd. 2.

CRIMJIG 18.40

DAMAGE TO TIMBER PROCESSING—ELEMENTS

The elements of damage to timber processing are:

First, the defendant (drove) (placed) (fastened) in timber a device of (iron) (steel) (ceramic) (or) (________) (a substance sufficiently hard to damage saws or wood processing or manufacturing equipment). "Timber" means trees, whether standing or down, that will produce forest products of value, and includes, but is not limited to, logs, posts, poles, bolts, pulp wood, cord wood, lumber, and decorative material.

Second, the defendant acted without claim of right or consent of the owner of the timber.

Third, at the time of the act, the defendant intended to hinder the logging or processing of timber.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of a question on the verdict form. The question is: Did the defendant's act cause great bodily harm? "Great bodily harm" means bodily harm that creates a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any part of the body, or other serious bodily harm. You will answer the question "yes" or "no." If you have a reasonable doubt as to the answer, you should answer the question "no."]

CRIMJIG 18.41

POSSESSION OF TIMBER DAMAGE DEVICES—DEFINED

Under Minnesota law, whoever

[1] possesses a device of (iron) (steel) (ceramic) (or) (other substance sufficiently hard to damage saws or wood processing, manufacturing, or transportation equipment) with the intent to use the device to hinder the logging or processing of timber,

[2] possesses a (chemical or biological substance) (mechanical equipment or tool) with the intent to use it or permit its use to damage timber processing, manufacturing, or transportation equipment,

is guilty of a crime.

COMMENT

M.S.A. § 609.592.

CRIMJIG 18.42

POSSESSION OF TIMBER DAMAGE DEVICES—ELEMENTS

The elements of possession of timber damage devices are:

[1] First, the defendant possessed a device of (iron) (steel) (ceramic) (or other substance sufficiently hard to damage saws or wood processing, manufacturing, or transportation equipment).

Second, the defendant possessed such device with the intent to use the device to hinder the logging or the processing of timber.

"Timber" means trees, whether standing or down, that will produce forest products of value, and includes, but is not limited to, logs, posts, poles, bolts, pulp wood, cord wood, lumber, and decorative material.

[2] First, the defendant possessed a (chemical or biological substance) (mechanical equipment or tool).

Second, the defendant possessed the (chemical or biological substance) (mechanical equipment or tool) with the intent to use it or permit its use to damage timber processing, manufacturing, or transportation equipment.

"Timber" means trees, whether standing or down, that will produce forest products of value, and includes, but is not limited to, logs, posts, poles, bolts, pulp wood, cord wood, lumber, and decorative material.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 18.43

DAMAGE OR THEFT TO ENERGY TRANSMISSION OR TELECOMMUNICATIONS EQUIPMENT—DEFINED

Under Minnesota law whoever intentionally and without the consent from a person authorized to give consent causes (any damage) (or) (takes removes, severs, or breaks)

[1] (any insulator or cross-arm, appurtenance or apparatus connected to the line, or any wire, cable, or current of) any lines erected or maintained for the purpose of transmitting electricity for light, heat, or power

[2] (any part of the pipe, main, or pipeline or any valve, meter, holder, compressor, machinery, appurtenance, equipment, or apparatus connected with) any pipe or main or hazardous liquid pipeline erected, operated or maintained for the purpose of transporting, conveying, or distributing gas or other hazardous liquids for light, heat, power, or any other purpose

[3] any machinery, equipment, or fixtures used in receiving, initiating, amplifying, processing, transmitting, retransmitting, recording, switching, or monitoring telecommunication services, such as computers, transformers, amplifiers, routers, repeaters, multiplexers, and other items performing comparable functions

[4] any machinery equipment, or fixtures used in the transportation of telecommunications services, radio transmitters and receivers, satellite equipment, microwave equipment, and other transporting media including wire, cable, fiber, poles and conduit

is guilty of a crime.

COMMENT

M.S.A. § 609.593

CRIMJIG 18.44

DAMAGE OR THEFT TO ENERGY TRANSMISSION OR TELECOMMUNICATIONS EQUIPMENT—ELEMENTS

The elements of (damage to) (theft of) (energy transmission equipment) (telecommunications equipment) are:

[1] First the defendant (caused damage to) (took, removed, severed, broke) (any insulator or cross-arm, appurtenance or apparatus connected to the line, or any wire, cable, or current of) any lines erected or maintained for the purpose of transmitting electricity for light, heat, or power.

[2] First the defendant (caused damage to) (took, removed, severed, broke) (any part of the pipe, main, or pipeline or any valve, meter, holder, compressor, machinery, appurtenance, equipment, or apparatus connected with) any pipe or main or hazardous liquid pipeline erected, operated or maintained for the purpose of transporting, conveying, or distributing gas or other hazardous liquids for light, heat, power, or any other purpose.

[3] First the defendant (caused damage to) (took, removed, severed, broke) any machinery, equipment, or fixtures used in receiving, initiating, amplifying, processing, transmitting, retransmitting, recording, switching, or monitoring telecommunication services, such as computers, transformers, amplifiers, routers, repeaters, multiplexers, and other items performing comparable functions.

[4] First the defendant (caused damage to) (took, removed, severed, broke) any machinery equipment, or fixtures used in the transportation of telecommunications services, radio transmitters and receivers, satellite equipment, microwave equipment, and other transporting media including wire, cable, fiber, poles and conduit.

Second, the defendant acted intentionally.

Third, the defendant acted without the consent from a person authorized to give consent.

Fourth, the defendant's act took place on or about ________ in ________ County.

If you find the each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CHAPTER 19

FORGERY AND RELATED CRIMES

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CRIMJIG 19.01

AGGRAVATED FORGERY—WRITING OR OBJECT OTHER THAN CHECK OR FINANCIAL TRANSACTION CARD—DEFINED

Under Minnesota law, whoever, with intent to defraud, makes or alters

[1] a writing or object that, if genuine, would (create) (terminate) (transfer) (evidence) legal rights or obligations,

[2] a writing or object that, if genuine, would normally be relied upon as evidence of debt or property rights,

[3] an official seal,

[4] the seal of a corporation,

[5] a public record (or an official authentication or certification of a copy thereof),

[6] an official return or certificate entitled to be received as evidence of its contents,

[7] a court order, judgment, decree, or process,

[8] the records or accounts of a public body, office, or officer,

[9] the records or accounts of a bank (or person) with whom funds of the State (or any of its agencies or subdivisions) are deposited or entrusted, relating to such funds,

so that it purports to have been made

[A] by another person or by the person under an assumed or fictitious name,

[B] at another time,

[C] with different provisions,

[D] by authority of one who did not give such authority,

is guilty of a crime.

COMMENT

M.S.A. § 609.625, subd. 1(1)–(7).

See also State v. Hawn, 289 Minn. 18, 182 N.W.2d 712 (1970); *State v. Clark*, 270 Minn. 538, 134 N.W.2d 857 (1965).

CRIMJIG 19.02

AGGRAVATED FORGERY—WRITING OR OBJECT OTHER THAN CHECK OR FINANCIAL TRANSACTION CARD—ELEMENTS

The elements of aggravated forgery are:

First, the defendant (made) (or) (altered) ________,

[1] a writing or object that, if genuine, would (create) (terminate) (transfer) (evidence) legal rights or obligations,

[2] a writing or object that, if genuine, would normally be relied upon as evidence of debt or property rights,

[3] an official seal,

[4] the seal of a corporation,

[5] a public record (or an official authentication or certification of a copy thereof),

[6] an official return or certificate entitled to be received as evidence of its contents,

[7] a court order, judgment, decree, or process,

[8] the records or accounts of a public body, office, or officer,

[9] the records or accounts of a bank (or person) with whom funds of the State (or any of its agencies or subdivisions) are deposited or entrusted, relating to such funds,

[A ________ is such a ________.]

Second, the defendant (made) (or) (altered) the ________, so that it appeared to have been made (by another) (by the defendant under an assumed or fictitious name) (at another time) (with different provisions) (by authority of one who did not give such authority) (________). It is not necessary that the defendant (made) (or) (altered) the entire ________, but it is necessary that the defendant made the ________ have this appearance.

Third, the defendant acted with intent to defraud. "Intent to defraud" is an intent to deceive another person for the purpose of persuading the person to part with property or gaining some material advantage over the person. (If the defendant intended to defraud someone, it is not necessary that the defendant had a particular person in mind.)

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.625, subd. 1(1)–(7).

It is not necessary to name the person intended to be defrauded. *State v. Goodrich*, 67 Minn. 176, 69 N.W. 815 (1897).

CRIMJIG 19.03

UTTERING OR POSSESSING—DEFINED

Under Minnesota law, whoever, with intent to defraud, (utters) (or) (possesses with intent to utter) a

[1] a writing or object that, if genuine, would (create) (terminate) (transfer) (evidence) legal rights or obligations,

[2] a writing or object that, if genuine, would normally be relied upon as evidence of debt or property rights,

[3] an official seal,

[4] the seal of a corporation,

[5] a public record (or an official authentication or certification of a copy thereof),

[6] an official return or certificate entitled to be received as evidence of its contents,

[7] a court order, judgment, decree, or process,

[8] the records or accounts of a public body, office, or officer,

[9] the records or accounts of a bank (or person) with whom funds of the State (or any of its agencies or subdivisions) are deposited or entrusted, relating to such funds,

and

[A] that has been so made or altered that it purports to have been made by a person other than the person who actually made it, or that has been made under an assumed or fictitious name.

[B] that has been altered by a person other than the original writer, so that it purports to have an effect or condition other than that written by the original writer

knowing it to be forged is guilty of a crime.

COMMENT

M.S.A. § 609.625, subd. 3.

CRIMJIG 19.04

UTTERING OR POSSESSING—ELEMENTS

The elements of (uttering) (or) (possessing) a forged instrument are:

First, the ________[1] was forged. This means that the ________ was falsely made or altered by a person (not necessarily the defendant)

[1] under an assumed or fictitious name.

[2] so that it appeared to be made by another person.

[3] so that it appeared to have an effect or condition other than that intended by the person originally writing it.

Second, the defendant knew the ________ was forged.

Third, the defendant

[A] uttered the forged ________. "To utter" means to make or attempt to make any use of a writing or object by which the user represents to another person, by words or conduct, that the writing or object is genuine.

[B] possessed the forged writing with intent "to utter" it. "To utter" means to make or attempt to make any use of a writing or object by which the user represents to another person, by words or conduct, that the writing or object is genuine.

> [The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (an item) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the item) at a given time. A person is in constructive possession of

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19.04 § 609.625, subd. 1.

[1] Writing or object listed in M.S.A.

> ________ (an item) if ________ (the item) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________[2] (the item). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.
>
> The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (an item), possession is exclusive. If two or more persons share actual or constructive possession of ________ (an item), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the item), whether exclusively or jointly with others.]

Fourth, the defendant (uttered) (or) (possessed) the forged ________ with intent to defraud. An "intent to defraud" is an intent to deceive another person for the purpose of persuading the person to part with property or gaining some material advantage over the person. (If the defendant intended to defraud someone, it is not necessary that the defendant had a particular person in mind.)

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable

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[2] In State v. Hunter, __N.W.2d __ (Minn. App 2015) the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.625, subd. 3.

In *State v. Lores*, 512 N.W.2d 618 (Minn. App. 1994), the Court of Appeals held that mere preparation of a counterfeit document without an overt act of presenting it to another party, or evidence showing intent to present it, does not constitute the crime of aggravated uttering a forged instrument.

It is not necessary to name the person intended to be defrauded. *State v. Goodrich*, 67 Minn. 176, 69 N.W. 815 (1897).

CRIMJIG 19.05

FORGERY—DEFINED

Under Minnesota law, whoever, with intent to injure or defraud,

[1] uses a false writing, knowing it to be false, for the purpose of identification or recommendation,

[2] destroys, mutilates, or, by alteration, false entry, or omission, falsifies any record, account, or other document relating to a private business,

[3] destroys a writing or object to prevent it from being produced at a trial, hearing, or other proceeding authorized by law,

is guilty of a crime.

COMMENT

M.S.A. § 609.63, subd. 1(1), (5), (7).

No attempt has been made to set forth instructions on all the subdivisions of M.S.A. § 609.63, but instructions on the omitted provisions may be modeled on the instructions provided.

CRIMJIG 19.06

FORGERY—ELEMENTS

The elements of forgery are:

[1] First, the defendant used a writing for the purpose of identification or recommendation. A "writing" is any tangible form of expression and includes a ________.

Second, the writing was false.

Third, the defendant knew the writing was false.

Fourth, the defendant had an intent to injure (________) (another), or an intent that (________) (another) believe the writing to be true and act in accordance with that belief.

[2] First, the defendant (destroyed) (mutilated) (falsified by alteration, false entry, or omission) ________.

Second, ________ was a record, account, or other document relating to a private business.

Third, the defendant had an intent to injure (________) (another), or an intent that (________) (another) believe the ________ as falsified, and act in accordance with that belief.

[3] First, the defendant destroyed ________.

Second, the defendant acted with the intent of preventing the ________ from being produced at a (trial) (hearing or other proceeding authorized by law).

Third, the defendant had an intent to injure (________) (another).

(Fourth) (Fifth), the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable

doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.63, subd. 1(1), (5), (7).

No attempt has been made to set forth instructions on all the subdivisions of M.S.A. § 609.63, but instructions on the omitted provisions may be modeled on the instructions provided.

CRIMJIG 19.07

FORGERY—USE OF FORGED WRITING IN EVIDENCE—DEFINED

Under Minnesota law, whoever, with knowledge that it is forged, offers a forged writing or object, in any (trial) (hearing or other proceeding authorized by law) is guilty of a crime.

COMMENT

M.S.A. § 609.63, subd. 2.

CRIMJIG 19.08

FORGERY—USE OF FORGED WRITING IN EVIDENCE—ELEMENTS

The elements of forgery are:

First, the defendant offered ________ in evidence as genuine, at a (trial) (hearing or other proceeding authorized by law). (A ________ is a proceeding authorized by law.)

Second, the ________ was forged. This means that it was intentionally made to appear to have been produced by someone other than its real maker, to say something other than what it originally said, or to be something other than what it is.

Third, the defendant, at the time of offering the ________ in evidence, knew that it was forged.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.63, subd. 2.

The penalty for this crime depends on whether or not the proceeding in which the evidence was introduced was a felony trial. This is a question of law and no instruction to the jury is required.

CRIMJIG 19.09

FORGERY—CHECK—DEFINED

Under Minnesota law whoever, with intent to defraud, falsely

> [1] makes (or alters) a check, so that it purports to have been made (by another) (by the maker under an assumed or fictitious name) (at another time) (with different provisions) (by the authority of one who did not give authority),
>
> [2] endorses or alters a check so that it purports to have been endorsed by another,

is guilty of a crime.

COMMENT

M.S.A. § 609.631, subd. 2.

CRIMJIG 19.10

FORGERY—CHECK—ELEMENTS

The elements of check forgery are:

[1] First, the defendant (made) (altered) a check by ________.

A "check" is defined as a check, draft, order of withdrawal, or similar negotiable instrument.

Second, the alteration caused the check to appear

[A] to have been made by a person other than the person originally making it.

[B] to have been made by the maker under an assumed or fictitious name.

[C] to have been made at another time.

[D] to have been made with different provisions.

[E] to have been made by the authority of one who did not give authority to (make) (alter) the check.

[2] First, the defendant falsely endorsed or altered a check.

A "check" is defined as a check, draft, order of withdrawal, or similar negotiable instrument.

Second, the endorsement or alteration caused the check to appear to have been endorsed by another.

Third, the defendant acted with the intent to defraud. "Intent to defraud" is an intent to deceive another person for the purpose of persuading the person to part with property or gaining some material advantage over the person. (If the defendant intended to defraud someone, it is not necessary that the defendant had a particular person in mind.)

[Fourth, the defendant been convicted within the preceding five years of the felony or gross misdemeanor offense of ________.][1]

[Fourth] [Fifth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant is guilty, you have (an) additional issue(s) to determine, and (it) (they) will be put to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are): (Was) (Were) the forged check(s) used to obtain or attempt to obtain property or services of more than $35,000, or was the aggregate amount of the forged checks more than $35,000? (Was) (Were) the forged check(s) used to obtain or to attempt to obtain property or services of more than $2,500, or was the aggregate amount of the forged check or checks more than $2,500? (Was) (Were) the forged check(s) used to obtain property or services of more than $250 but not more than $2,500, or was the aggregate face amount of the forged check(s) more than $250 but not more than $2,500? (Was) (Were) the forged check or checks used to obtain or in an attempt to obtain property or services of not more than $250, or was the aggregate face amount of the forged check or checks not more than $250?]

If you have a reasonable doubt as to the value, you should answer "yes" to the lesser of the values you believe it had. [If you have a reasonable doubt as to the prior conviction, you should answer the question "no."]

19.10

[1] This element should be used only in cases in which the defendant has been charged with an enhanced violation as the result of a prior conviction under M.S.A. §§ 609.631; 609.24; 609.245; 609.52; 609.53; 609.582, subd. 1, 2, or 3; 609.625; 609.63; 609.821 or a conforming statute from another state. Note that the defendant can stipulate to the prior conviction and remove this element from the jury's consideration. *See State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

COMMENT

See State v. Davidson, 351 N.W.2d 8 (Minn. 1984), which permits the defendant to stipulate to a prior conviction, preventing that issue from going to the jury.

CRIMJIG 19.11

FORGED CHECK—(OFFERING) (POSSESSING)—DEFINED

Under Minnesota law, whoever, with intent to defraud, (offers) (or) (possesses with intent to offer) a forged check, whether or not it is accepted, is guilty of a crime.

COMMENT

M.S.A. § 609.631, subd. 3.

CRIMJIG 19.12

FORGED CHECK—(OFFERING) (POSSESSING)—ELEMENTS

The elements of (offering) (possessing) a forged check are:

First, the (check was) (checks were) forged. A check is forged if a person (not necessarily the defendant), with intent to defraud, falsely made or altered it so that it [purports to have been made (by another) (by the maker under an assumed or fictitious name) (at another time) (with different provisions) (by the authority of one who did not give authority)] [is falsely endorsed or altered so that it appears to have been endorsed by another]. A "check" means a check, draft, order of withdrawal, or ________.[1]

Second, the defendant knew the check was forged.

Third, the defendant

[A] offered the forged check. "To offer" means to make or attempt to make any use of a writing by which the user represents to another person by words or conduct that the writing is genuine. It does not matter whether or not the check was accepted.

[B] possessed the forged check with intent to offer it. "To offer" means to make or attempt to make any use of a writing by which the user represents to another by words or conduct that the writing is genuine. In order to have possessed the check, it is not necessary that the defendant had it upon the defendant's person, but the defendant must have exercised knowing dominion and control over it.

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (an item) if

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19.12

[1] Whether a document is a similar negotiable or nonnegotiable instrument would normally be resolved by the court as a matter of law.

(he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the item) at a given time. A person is in constructive possession of ________ (an item) if ________ (the item) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________ (the item). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (an item), possession is exclusive. If two or more persons share actual or constructive possession of ________ (an item), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the item), whether exclusively or jointly with others.]

Fourth, the defendant (offered) (possessed) the forged check with intent to defraud. An "intent to defraud" is an intent to deceive another person for the purpose of persuading the person to part with property or gaining some material advantage over the person. (If the defendant intended to defraud someone, it is not necessary that the defendant had a particular person in mind.)

[Fifth, the defendant been convicted within the preceding five years of the offense of ________.[2]]

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[2] This element should only be used in cases in which the defendant has been charged with an enhanced violation as the result of a prior conviction under M.S.A. §§ 609.631; 609.24; 609,245; 609.52; 609.53; 609.582, subd. 1, 2, or 3; 609.625; 609.63; 609.821 or a conforming statute from another state. Note that the defendant may stipulate to the prior conviction, re-

Fifth, the defendant's act took place on (or about) ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant is guilty, you have (an) additional issue(s) to determine, and (it) (they) will be put to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are): (Was) (Were) the forged check(s) used to obtain or to attempt to obtain property or services of more than $35,000, or was the aggregate amount of the forged check(s) more than $35,000? (Was) (Were) the forged check(s) used to obtain or to attempt to obtain property or services of more than $2,500, or was the aggregate face amount of the forged check(s) more than $2,500? (Was) (Were) the forged check(s) used to obtain or to attempt to obtain property or services of more than $250, but not more than $2,500, or was the aggregate face amount of the check(s) more than $250, but not more than $2,500? Has (Was) (Were) the forged check(s) used to obtain or in an attempt to obtain property or services of not more than $250, or was the aggregate face amount of the check(s) not more than $250?]

[If you have a reasonable doubt as to the value, you should answer "yes" to the lesser of the values you believe it had. If you have a reasonable doubt as to the prior conviction, you should answer the question "no."]

COMMENT

See State v. Davidson, 351 N.W.2d 8 (Minn. 1984), which permits the defendant to stipulate to a prior conviction, preventing that issue from going to the jury.

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moving that element from the jury's consideration. *See State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

C. DRUG CRIMES

CHAPTER 20

DRUG CRIMES

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CRIMJIG 20.01

CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE—SALE—DEFINED

Under Minnesota law, whoever, on one or more occasions within a ninety-day period, unlawfully sells

[1] one or more mixtures of a total weight of ten grams or more containing (cocaine) (heroin) (methamphetamine),

[2] one or more mixtures of a total weight of fifty grams or more containing a ________[1]

[3] one or more mixtures of a total weight of fifty grams or more of ________[2]

20.01

[1] The narcotic drug charged in the complaint.

[2] Amphetamine, phencyclidine, or the hallucinogen charged in the complaint.

[4] one or more mixtures containing two hundred or more dosage units of ________[3]

[4] one or more mixtures of a total weight of [fifty kilograms or more containing (marijuana) (tetrahydrocannabinols)] [[twenty-five kilograms or more containing (marijuana) (tetrahydrocannabinols)] in a [school zone] [park zone] [public housing zone] [drug treatment facility]]

is guilty of a crime.

COMMENT

See M.S.A. § 152.021, subd. 1.

In *State v. Traxler*, 583 N.W.2d 556 (Minn. 1998), the Supreme Court reversed the defendant's conviction for a first degree controlled substance crime involving manufacture of methamphetamine, but affirmed a fifth degree conviction, holding that the State need not prove a specific amount of drugs possessed as an element of the crime.

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[3] Amphetamine, phencyclidine, or the hallucinogen charged in the complaint.

CRIMJIG 20.02

CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE—SALE—ELEMENTS

The elements of a controlled substance violation in the first degree are:

First, the defendant, on one or more occasions within a ninety-day period, unlawfully sold

[1] one or more mixtures of a total weight of ten grams or more containing (cocaine) (heroin) (methamphetamine).

[2] one or more mixtures of a total weight of fifty grams or more containing ________.[1]

[3] one or more mixtures of a total weight of fifty grams or more of ________.[2]

[4] one or more mixtures equaling two hundred or more dosage units of ________.[3]

[4] one or more mixtures of a total weight of fifty kilograms or more containing (marijuana) (tetrahydrocannabinols).

[5] one or more mixtures of a total weight of twenty-five kilograms or more containing (marijuana) (tetrahydrocannabinols) in a [school zone] [park zone] [public housing zone] [drug treatment facility].

[A "school zone" is any property owned, leased, or controlled by a school district or an organization operating a nonpublic school[4] where an elementary, middle, or secondary school, secondary vocational center, or other school providing

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20.02

[1] The narcotic charged in the complaint.

[2] The amphetamine, phencyclidine, or hallucinogen charged in the complaint.

[3] The amphetamine, phencyclidine, or hallucinogen charged in the complaint.

[4] *See* M.S.A. § 123.932, subd. 3, for the definition of a non-public school.

educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or cocurricular activities are regularly provided.] [A school zone also includes the area surrounding the school property to a distance of 300 feet or one city block, whichever is greater, beyond the school property.] [A school zone also includes the area within a school bus when the school bus is being used to transport one or more elementary of secondary school students.] [A "park zone" is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. Park zone includes the area (within three hundred feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.] [A "public housing zone" is a public housing project or development administered by a local housing agency, plus the area (within three hundred feet of the property's boundary,) (or) (one city block,) (whichever distance is greater).] [A "drug treatment facility" means a residential treatment facility, and includes any property owned, leased, or controlled by the facility.]

"To sell" means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, or to offer or agree to do the same, or possess with intent to do the same, or to manufacture. ["To manufacture" means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, and their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.]

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.[5]

Second, defendant knew or believed that the substance sold was ((a) mixture(s)) containing ________[6] (a controlled substance).

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[5] Note the exceptions listed under M.S.A. § 152.0221, subd. 2(b); 152.022, subd. 2(b); and 152.023, subd. 2(b).

[6] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the

Third, the defendant's sale was unlawful. (The defendant had no legal authority to sell _____.)

Fourth, one or more sales took place on (or about) ________ in ________ County.[7]

If you find that each of these elements has been proven beyond a reasonable doubt, defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, defendant is not guilty.

COMMENT

See M.S.A. § 152.01 for the definitions of sell, manufacture, and mixture. A "sale" requires more than a temporary surrender of the controlled substance. *State v. Barrow*, __ N.W.2d __ (Minn. 2015).

Whether a particular drug is a narcotic drug under M.S.A. § 152.01, subd. 10, or a hallucinogen, is a question of law with which the jury is not concerned. *Steeves v. State*, 287 Minn. 476, 178 N.W.2d 723 (1970).

In cities where no grid system is present, the term "one city block" does not apply and the transaction must take place within 300 feet of the park for the statute to apply. *See State v. Estrella*, 700 N.W.2d 496 (Minn. App. 2005).

When land surrounding a public park is divided into rectangular blocks bounded by city streets, the area "within one city block . . . of the park boundary" include the entire area of block adjacent to the park. *State v. Carufel*, 783 N.W.2d 539 (Minn. 2010) (a controlled substance case). This holding would presumably also apply to a school zone or public housing zone

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specific fact exists under M.S.A. § 609.02, subd. 9.

[7] *See* M.S.A. 152.021, subd. 3(c).

CRIMJIG 20.03

CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE—POSSESSION—DEFINED

Under Minnesota law, whoever unlawfully possesses

[1] one or more mixtures of a total weight of twenty-five grams or more containing (cocaine) (heroin) (methamphetamine),

[2] one or more mixtures of a total weight of five hundred grams or more containing ________[1]

[3] one or more mixtures of a total weight of five hundred grams or more of ________[2]

[4] one or more mixtures of (five hundred or more dosage units of) ________[3]

[5] one or more mixtures of a total weight of one hundred kilograms or more containing marijuana or tetrahydrocannabinols,

is guilty of a crime.

COMMENT

M.S.A. § 152.021, subd. 2.

20.03

[1] The narcotic charged in the complaint.

[2] The amphetamine, phencyclidine, or hallucinogen charged in the complaint.

[3] The amphetamine, phencyclidine, or hallucinogen charged in the complaint.

CRIMJIG 20.04

CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE—POSSESSION—ELEMENTS

The elements of a controlled substance crime in the first degree are:

First, the defendant knowingly possessed

[1] one or more mixtures of a total weight of twenty five grams or more containing (cocaine) (heroin) (methamphetamine).

[2] one or more mixtures of a total weight of five hundred grams or more of ________.[1]

[3] one or more mixtures of a total weight of five hundred grams or more of ________.[2]

[4] one or more mixtures of five hundred or more dosage units of ________.[3]

[5] one or more mixtures of a total weight of one hundred kilograms or more containing marijuana or tetrahydrocannabinols.

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity. [The weight of a mixture includes the fluid in a water pipe ("bong") only if the mixture contains four or more fluid ounces of fluid.[4]]

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (the controlled substance) if (he) (she)

20.04

[1] The narcotic charged in the complaint.

[2] The amphetamine, phencyclidine, or hallucinogen charged in the complaint.

[3] The amphetamine, phencyclidine, or hallucinogen charged in the complaint.

[4] See *State v. Peck*, 773 N.W.2d 768 (Minn. 2009) and M.S.A. § 152.021, subd. 2(b), modifying *Peck*.

has it on (his) (her) person or is exercising direct physical control over ________ (the controlled substance) at a given time. A person is in constructive possession of ________ (the controlled substance) if ________ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________ (the controlled substance). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of ________ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the controlled substance), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the substance possessed was ________[5] (a controlled substance).

Third, the defendant's possession was unlawful. (The defendant had no legal authority to possess ____.)

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

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[5] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

COMMENT

The requirements for constructive possession are drawn from *State v. Mollberg*, 310 Minn. 376, 246 N.W.2d 463 (1976), and *State v. Florine*, 303 Minn. 103, 226 N.W.2d 609 (1975). Possession need not be by the defendant alone, but may be shared with others. *State v. LaBarre*, 292 Minn. 228, 195 N.W.2d 435 (1972). See also *State v. Hunter*, 857 N.W.2d 537 (Minn. App. 2014), in which the Court of Appeals held that possession requires dominion and control over the controlled substance and not the place where the controlled substance is found.

Although M.S.A. § 152.028 provides for a permissive inference of knowing possession, instructions on permissive inferences are disfavored. See *State v. Litzau*, 650 N.W.2d 177 (Minn.2002) and *State v. Olson*, 482 N.W.2d 212 (Minn.1992).

Bong water that tested positive for presence of methamphetamine was a "mixture" for purposes of a first-degree controlled-substance charge based on possession of one or more mixtures that contain a controlled substance and that weigh 25 grams. *State v. Peck*, 773 N.W.2d 768 (Minn. 2009). See M.S.A. § 152.021, subd. 2(b).

CRIMJIG 20.05

CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE—METHAMPHETAMINE MANUFACTURER—DEFINED

Under Minnesota law, whoever unlawfully intentionally manufactures any amount of methamphetamine is guilty of a crime.

COMMENT

M.S.A. § 152.021, subd. 2a.

CRIMJIG 20.06

CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE—METHAMPHETAMINE MANUFACTURER—ELEMENTS

The elements of a controlled substance crime in the first degree are:

First, the defendant manufactured any amount of methamphetamine. ["Unlawfully" means to sell or possess a controlled substance in a manner not authorized by law.] ["To manufacture" means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.]

Second, the defendant intentionally[1] manufactured the methamphetamine.

Third, the defendant's manufacture of methamphetamine was unlawful.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

20.06

[1] Since the offense is a felony, the law requires a mens rea element. See *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012)

CRIMJIG 20.07

CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE—SALE—DEFINED

Under Minnesota law, whoever, on one or more occasions within a ninety day period, unlawfully sells

[1] one or more mixtures of a total weight of three grams or more containing (cocaine) (heroin) (methamphetamine)

[2] one or more mixtures of a total weight of ten grams or more containing a ________[1]

[3] one or more mixtures of a total weight of ten grams or more containing____[2]

[4] one or more mixtures of fifty or more dosage units of ________[3]

[5] one or more mixtures of a total weight of twenty-five kilograms or more containing (marijuana) (tetrahydrocannabinols)

is guilty of a crime.

COMMENT

M.S.A. § 152.022, subd. 1(1–4).

20.07

[1] The narcotic drug charged in the complaint.

[2] The amphetamine, phencyclidine, or hallucinogen charged in the complaint

[3] The amphetamine, phencyclidine, or hallucinogen charged in the complaint.

CRIMJIG 20.08

CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE—SALE—ELEMENTS

The elements of a controlled substance crime in the second degree are:

First, the defendant on one or more occasions within a ninety-day period sold

[1] one or more mixtures of a total weight of three grams or more containing (cocaine) (heroin) (methamphetamine).

[2] one or more mixtures of a total weight of ten grams or more containing ________.[1]

[3] one or more mixtures of a total weight of ten grams or more of ________.[2]

[4] one or more mixtures equaling fifty or more dosage units of ________.[3]

[5] one or more mixtures of a total weight of twenty-five kilograms or more containing (marijuana) (tetrahydrocannabinols).

"To sell" means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, to offer or agree to do the same, to possess with intent to do the same, or to manufacture. ["To manufacture" means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.] A "mixture" is a prepara-

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20.08

[1] The narcotic drug charged in the complaint.

[2] The amphetamine, phencyclidine, or hallucinogen charged in the complaint

[3] The amphetamine, phencyclidine, or hallucinogen charged in the complaint.

tion, compound, mixture, or substance containing a controlled substance, regardless of its purity.

Second, the defendant knew or believed that the substance sold was (a) mixture(s) containing ________ (a controlled substance).[4]

Third, the defendant's sale was unlawful. (The defendant had no legal authority to sell _____.)

Fourth, one or more sales took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See M.S.A. § 152.01 for the definitions of sell, manufacture, and mixture.

Whether or not a particular drug is a narcotic drug under M.S.A. § 152.01, subd. 10, or an hallucinogen is a question of law. *Steeves v. State*, 287 Minn. 476, 178 N.W.2d 723 (1970).

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[4] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

CRIMJIG 20.09

CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE—SALE/MINORS—DEFINED

Under Minnesota law, whoever unlawfully sells any amount of ________,[1] (when the sale is made to a person under the age of eighteen) (when the person conspires with or employs a person under the age of eighteen to unlawfully sell the substance), is guilty of a crime.

COMMENT

M.S.A. § 152.022, subd. 1(5).

20.09

[1] The Schedule I or II narcotic charged in the complaint.

CRIMJIG 20.10

CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE—SALE/MINORS—ELEMENTS

The elements of a controlled substance crime in the second degree are:

First, the defendant sold ________.[1]

"To sell" means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, to offer or agree to do the same, to possess with intent to do the same, or to manufacture. ["To manufacture" means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.]

Second, the defendant knew or believed that the substance sold was ________[2] (a controlled substance).

[1] Third, the defendant sold the ________ to a person who was under the age of eighteen.

[2] Third, the defendant (conspired with) (employed) a person under the age of eighteen to unlawfully sell ________.

Fourth, the defendant's sale was unlawful. (The defendant had no legal authority to sell ____.)

Fifth, the defendant's act(s) took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find

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20.10

[1] The Schedule I or II narcotic charged in the complaint.

[2] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See M.S.A. § 152.01 for the definitions of sell and manufacture.

See CRIMJIG 5.06 for a definition of conspiracy.

Whether or not a particular drug is a Schedule I or II drug, or a narcotic drug under M.S.A. § 152.01, subd. 10, is a question of law. *Steeves v. State*, 287 Minn. 476, 178 N.W.2d 723 (1970).

CRIMJIG 20.11

CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE—SALE/SCHOOLS/PARKS/ PUBLIC HOUSING/DRUG TREATMENT FACILITY— DEFINED

Under Minnesota law, whoever unlawfully sells (any amount of ________[1]) (one or more mixtures containing methamphetamine or amphetamine) (one or more mixtures of a total weight of five kilograms or more containing marijuana or tetrahydrocannabinols) in a [school zone] [park zone] [public housing zone] [drug treatment facility] is guilty of a crime.

COMMENT

M.S.A. § 152.022, subd. 1(6).

20.11

[1] The Schedule I or II narcotic, LSD, 3,4 methylenedioxy amphetamine, or 3,4 methylenedioxymetamphetamine charged in the complaint.

CRIMJIG 20.12

CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE—SALE/SCHOOLS/PARKS/ PUBLIC HOUSING/DRUG TREATMENT FACILITY— ELEMENTS

The elements of a controlled substance crime in the second degree are:

First, the defendant unlawfully sold (any amount of ________[1]) (one or more mixtures containing methamphetamine or amphetamine) (one or more mixtures of a total weight of five kilograms or more containing marijuana or tetrahydrocannabinols).

"To sell" means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, to offer or agree to do the same, to possess with intent to do the same, or to manufacture. ["To manufacture" means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.] A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

Second, the defendant knew or believed that the substance sold was ________ (a controlled substance).[2]

Third, the sale occurred in a [school zone] [park zone] [public housing zone] [drug treatment facility].

[A "school zone" is any property owned, leased, or controlled by a school district or an organization operating a

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20.12

[1] The Schedule I or II narcotic, LSD, 3,4 methylenedioxy amphetamine, or 3,4 methylenedioxymetamphetamine

[2] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

nonpublic school[3] where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.] [A school zone also includes the area surrounding the school property to a distance of 300 feet or one city block, whichever is greater, beyond the school property.] [A school zone also includes the area within a school bus when the school bus[4] is being used to transport one or more elementary of secondary school students.] [A "park zone" is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. "Park zone" includes the area within (three hundred feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.] [A "public housing zone" is a public housing project or development administered by a local housing agency, plus the area within (three hundred feet of the property's boundary,) (or) (one city block,) (whichever distance is greater).] [A "drug treatment facility" means a residential drug treatment facility, and includes any property owned, leased, or controlled by the facility.]

Fourth, the defendant's sale was unlawful. (The defendant had no legal authority to sell ____.)

Fifth, defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

A sale requires more than a temporary surrender of the controlled substance. *State v. Barrow*, ___ N.W.2d ___ (Minn. 2015).

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[3] *See* M.S.A. 123.932, subd. 3, for the definition of a nonpublic school.

[4] See M.S.A. § 169.011, subd. 71, for the definition of a school bus.

In cities where no grid system is present, the term "one city block" does not apply and the transaction must take place within 300 feet of the park for the statute to apply. *See State v. Estrella*, 700 N.W.2d 496 (Minn. App. 2005).

When land surrounding a public park is divided into rectangular blocks bounded by city streets, the area "within one city block . . . of the park boundary" include the entire area of block adjacent to the park. *State v. Carufel*, 783 N.W.2d 539 (Minn. 2010) (a controlled substance case). This holding would presumably also apply to a school zone or public housing zone

CRIMJIG 20.13

CONTROLLED SUBSTANCE CRIME IN SECOND DEGREE—POSSESSION—DEFINED

Under Minnesota law, whoever unlawfully possesses one or more mixtures of

[1] a total weight of six grams or more containing (cocaine) (heroin) (methamphetamine)

[2] a total weight of fifty grams or more containing ________[1]

[3] a total weight of fifty grams or more of ________[2]

[4] one hundred or more dosage units) of ________,[3]

[5] a total weight of fifty kilograms or more containing marijuana or tetrahydrocannabinols,

is guilty of a crime.

COMMENT

M.S.A. § 152.022, subd. 2.

20.13

[1] The narcotic charged in the complaint.

[2] The amphetamine, phencyclidine, or hallucinogen charged in the complaint

[3] The amphetamine, phencyclidine, or hallucinogen charged in the complaint.

CRIMJIG 20.14

CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE—POSSESSION—ELEMENTS

The elements of a controlled substance crime in the second degree are:

First, the defendant knowingly possessed one or more mixtures of

[1] a total weight of six grams or more containing (cocaine) (heroin) (methamphetamine).

[2] a total weight of fifty grams or more of ________.[1]

[3] a total weight of fifty grams or more of ________.[2]

[4] a total of one hundred or more dosage units of ________.[3]

[5] a total weight of fifty kilograms or more containing marijuana or tetrahydrocannabinols.

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity. [The weight of a mixture includes the fluid in a water pipe ("bong") only if the mixture contains four or more fluid ounces of fluid.[4]]

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the controlled substance) at a given time. A person is in constructive possession of ________ (the controlled

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20.14

[1] The narcotic charged in the complaint.

[2] The amphetamine, phencyclidine, or hallucinogen charged in the complaint.

[3] The amphetamine, phencyclidine, or hallucinogen charged in the complaint.

[4] See *State v. Peck*, 773 N.W.2d 768 (Minn. 2009) and M.S.A. § 152.022, subd. 2(b), modifying *Peck*.

substance) if ________ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________ (the controlled substance[5]). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of ________ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the controlled substance), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the substance possessed was ________ (a controlled substance).[6]

Third, the defendant's possession was unlawful. (The defendant had no legal authority to possess______.)

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable

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[5] In State v. Hunter, __N.W.2d __ (Minn. App 2015) the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

[6] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

doubt, the defendant is not guilty.

COMMENT

The requirements for constructive possession are drawn from *State v. Mollberg*, 310 Minn. 376, 246 N.W.2d 463 (1976), and *State v. Florine*, 303 Minn. 103, 226 N.W.2d 609 (1975). Possession need not be by the defendant alone, but may be shared with others. *State v. LaBarre*, 292 Minn. 228, 195 N.W.2d 435 (1972).

CRIMJIG 20.15

CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE—SALE—DEFINED

Under Minnesota law, whoever unlawfully sells

[1] one or more mixtures containing ________[1]

[2] on one or more occasions within a ninety day period, one or more mixtures containing (phencyclidine) (an hallucinogen) that is packaged in dosage units and equals ten or more dosages.

[3] one or more mixtures containing ________[2] to a person under the age of eighteen

[4] on one or more occasions within a ninety day period, one or more mixtures of a total weight of five kilograms or more containing marijuana or tetrahydrocannabinols

is guilty of a crime.

COMMENT

M.S.A. § 152.023, subd. 1.

In *State v. Richmond*, 730 N.W.2d 62 (Minn. App. 2007) the Court of Appeals held that the legislature intended that the sale of less than three grams of cocaine be punishable as a third-degree controlled substance offense involving a narcotic drug, rather than as a fourth-degree offense.

20.15

[1] The narcotic charged in the complaint.

[2] Any controlled substance classified as a Schedule I, II, or III substance, except a Schedule I or II narcotic,

CRIMJIG 20.16

CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE—SALE—ELEMENTS

The elements of a controlled substance crime in the third degree are:

First, the defendant sold

[1] one or more mixtures containing ________.[1]

[2] one or more mixtures containing (phencyclidine) (an hallucinogen) on one or more occasions within a ninety day period, that is packaged in dosage units and ten or more dosage units of ________. [________ is an hallucinogen.]

[3] one or more mixtures containing ________[2]

[4] on one or more occasions within a ninety day period, one or more mixtures of a total weight of five kilograms or more containing marijuana or tetrahydrocannabinols.

Second, defendant sold the mixtures to a person under eighteen years of age. Mistake of age is not a defense.

"To sell" means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, to offer or agree to do the same, to possess with intent to do the same, or to manufacture. ["To manufacture" means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.] A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

20.16

[1] The narcotic charged in the complaint.

[2] Any controlled substance classified as a Schedule I, II, or III substance, except a Schedule I or II narcotic, marijuana, or tetrahydrocannabinols.

[Second] [Third], the defendant knew or believed that the substance sold was ________ (a controlled substance).[3]

[Third] [Fourth], the defendant's sale was unlawful. (The defendant had no legal authority to sell _____ (a controlled substance).)

[Fourth] [Fifth], the defendant's act(s) took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Mistake of age is not an affirmative defense to a charge of third degree controlled-substance crime. *See State v. Skapyak*, 702 N.W.2d 331 (Minn. App. 2005).

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[3] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

CRIMJIG 20.17

CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE—CONSPIRACY/MINOR—DEFINED

Under Minnesota law, whoever conspires with or employs a person under the age of eighteen to sell one or more mixtures of ________[1] is guilty of a crime.

COMMENT

M.S.A. § 152.023, subd. 1(4).

20.17

[1] Any controlled substance classified as a Schedule I, II, or III substance, except a Schedule I or II narcotic.

CRIMJIG 20.18

CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE—CONSPIRACY/MINOR—ELEMENTS

The elements of a controlled substance crime in the third degree are:

First, the defendant (conspired with ________ (another person)) (employed ________ (another person)) to sell one or more mixtures containing ________.[1]

A person conspires with another to commit a crime when the person agrees to commit the crime, and the person or another party to the conspiracy does an overt act for the purpose of furthering the conspiracy.[2]

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

Second, ________ (the other person) was under the age of eighteen.

Third, the defendant('s) (acts) (entered the agreement and an overt act) took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

20.18

[1] Any controlled substance classified as a Schedule I, II, or III substance, except a Schedule I or II narcotic.

[2] The court may wish to instruct further on conspiracy, using CRIMJIGs 5.06 to 5.16.

CRIMJIG 20.19

CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE—POSSESSION—DEFINED

Under Minnesota law, whoever, on one or more occasions within a ninety-day period, unlawfully possesses

> [1] one or more mixtures of a total weight of three grams or more containing (cocaine) (heroin) (methamphetamine),
>
> [2] one or more mixtures of a total weight of ten grams or more containing ________,[1]
>
> [3] one or more mixtures that is packaged in dosage units equaling fifty or more dosage units of ________,[1]
>
> [4] one or more mixtures of a total weight of ten kilograms or more containing marijuana or tetrahydrocannabinols,

is guilty of a crime.

COMMENT

M.S.A. § 152.023, subd. 2.

20.19

[1] The narcotic charged in the complaint.

CRIMJIG 20.20

CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE—POSSESSION—ELEMENTS

The elements of possession of a controlled substance crime in the third degree are:

First, the defendant on one or more occasions within a ninety-day period unlawfully possessed

[1] one or more mixtures of a total weight of three grams or more containing (cocaine) (heroin) (methamphetamine).

[2] one or more mixtures of a total weight of ten grams or more of ________.[1]

[3] one or more mixtures equaling fifty or more dosage units of ________.[2]

[4] one or more mixtures of a total weight of ten kilograms or more containing marijuana or tetrahydrocannabinols.

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity. [The weight of a mixture includes the fluid in a water pipe ("bong") only if the mixture contains four or more fluid ounces of fluid.[3]]

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the controlled substance) at a given time. A person is in constructive possession of ________ (the controlled substance) if ________ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not

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20.20

[1] The narcotic charged in the complaint.

[2] Phencyclidine or other hallucinogen.

[3] See *State v. Peck*, 773 N.W.2d 768 (Minn. 2009) and M.S.A. § 152.023, subd. 2(b), modifying *Peck*.

normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________ (the controlled substance[4]). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of ________ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the controlled substance), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the substance possessed was ________ (a controlled substance).[5]

Third, the defendant's possession was unlawful. (The defendant had no legal authority to possess____.)

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

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[4] In *State v. Hunter*, 857 N.W.2d 537 (Minn. App 2015), the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

[5] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

COMMENT

In *State v. Clausen*, 493 N.W.2d 113 (Minn. 1992), the Supreme Court rejected a constitutional challenge to M.S.A. § 152.023, subd. 2(2) and (3). The court held that the statute did not violate the due process clause of either the United States Constitution or the Minnesota Constitution, and held that it did not create an irrebuttable presumption that a the defendant who possesses ten or more grams of cocaine had the criminal intent to sell it. The court held that the statute provided sufficient notice of prohibited conduct and was not arbitrary nor discriminatory in enforcement.

The requirements for constructive possession are drawn from *State v. Mollberg*, 310 Minn. 376, 246 N.W.2d 463 (1976), and *State v. Florine*, 303 Minn. 103, 226 N.W.2d 609 (1975). Possession need not be by the defendant alone, but may be shared with others. *State v. LaBarre*, 292 Minn. 228, 195 N.W.2d 435 (1972). See also *State v. Hunter*, __ N.W.2d __ (Minn. App. 2014), in which the Court of Appeals held that possession requires dominion and control over the controlled substance and not the place where the controlled substance is found.

CRIMJIG 20.21

CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE—POSSESSION/SCHOOL/PARK/PUBLIC HOUSING/DRUG TREATMENT FACILITY—DEFINED

Under Minnesota law, whoever, period, unlawfully possesses

[1] any amount of ____[1] on one or more occasions within a ninety day period

[2] five or more dosage units of ____[2] on one or more occasions within a ninety day period

[3] one or more mixtures containing (amphetamine) (or) (methamphetamine)

in a [school zone] [park zone] [public housing zone][drug treatment facility] is guilty of a crime.

COMMENT

M.S.A. § 152.023, subd. 2(4) and 2(6).

20.21

[1] The Schedule I or II narcotic drug alleged in the complaint.

[2] LSD, 3,4 methylenedioxy amphetamine, or 3,4 methylenedioxyamphetamine.

CRIMJIG 20.22

CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE—POSSESSION IN SCHOOL/PARK/PUBLIC HOUSING ZONE/DRUG TREATMENT FACILITY—ELEMENTS

The elements of a controlled substance crime in the third degree are:

First, the defendant knowingly possessed ((any amount of ________[1] on one or more occasions within a 90-day period) (five or more dosage units of ________[2] on one or more occasions within a 90-day period) (one or more mixtures containing (amphetamine) (or) (methamphetamine).

[A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity. [The weight of a mixture includes the fluid in a water pipe ("bong") only if the mixture contains four or more fluid ounces of fluid.[3]]]

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the controlled substance) at a given time. A person is in constructive possession of ________ (the controlled substance) if ________ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________ (the controlled substance[4]). You may find that the element of possession, as that term is used in these instructions,

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20.22

[1] The Schedule I or II narcotic drug alleged in the complaint.

[2] LSD, 3,4 methylenedioxy amphetamine, or 3,4methylenedioxyamphetamine.

[3] See *State v. Peck*, 773 N.W.2d 768 (Minn. 2009) and M.S.A. § 152.021, subd. 2(b), modifying *Peck*.

[4] In *State v. Hunter*, 857 N.W.2d 537 (Minn. App 2014), the Court of Appeals indicated that the use of the

is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of ________ (a controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the controlled substance), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the substance the defendant possessed was ________ (a controlled substance).[5]

Third, the defendant possessed the ________ (controlled substance) in a [school zone] [park zone] [public housing zone] [drug treatment facility].

[A "school zone" is any property owned, leased, or controlled by a school district or an organization operating a nonpublic school[6] where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.] [A school zone also includes the area surrounding the school property to a distance of 300 feet or one city block, whichever is greater, beyond the school property.] [A school zone also includes the area within a school bus when the school bus[7] is being used to transport one or more elementary of secondary school students.] [A "park

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pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

[5] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

[6] *See* M.S.A. § 123.932, subd. 3, for the definition of a nonpublic school.

[7] See M.S.A. § 169.011, subd. 71, for the definition of a school bus.

zone" is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. "Park zone" includes the area within (three hundred feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.] [A "public housing zone" is a public housing project or development administered by a local housing agency, plus the area within (three hundred feet of the property's boundary,) (or) (one city block,) (whichever distance is greater).] [A "drug treatment facility" is a licensed residential drug treatment facility, and includes property owned, leased, or controlled by the facility.]

Fourth, the defendant's possession was unlawful. (The defendant had no legal authority to possess____.)

Fifth, the defendant's act took place on (or about) ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 152.023, subds. 2(4) and 2(6).

The requirements for constructive possession are drawn from *State v. Mollberg*, 310 Minn. 376, 246 N.W.2d 463 (1976), and *State v. Florine*, 303 Minn. 103, 226 N.W.2d 609 (1975). Possession need not be by the defendant alone, but may be shared with others. *State v. LaBarre*, 292 Minn. 228, 195 N.W.2d 435 (1972). See also *State v. Hunter*, __ N.W.2d __ (Minn. App. 2014), in which the Court of Appeals held that possession requires dominion and control over the controlled substance and not the place where the controlled substance is found.

In cities where no grid system is present, the term "one city block" does not apply and the transaction must take place within 300 feet of the park for the statute to apply. *See State v. Estrella*, 700 N.W.2d 496 (Minn. App. 2005).

When land surrounding a public park is divided into rectangular blocks bounded by city streets, the area "within one city block . . . of the park boundary" include the entire area of block adjacent to the park. *State v. Carufel*, 783 N.W.2d 539 (Minn. 2010) (a controlled substance case). This holding would presumably also apply to a school zone or public housing zone

The Supreme Court, in *State v. Benniefield*, 678 N.W.2d 42 (Minn. 2004), held that the State is not required to prove that a defendant knew that he was in a school zone or intended to commit the crime in a school zone.

CRIMJIG 20.23

CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE—SALE—DEFINED

Under Minnesota law, whoever unlawfully sells one or more mixtures containing ________[1] is guilty of a crime.

COMMENT

M.S.A. § 152.024, subd. 1.

20.23

[1] A Schedule I, II, or III controlled substance, except marijuana or tetrahydrocannabinols.

CRIMJIG 20.24

CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE—SALE—ELEMENTS

The elements of a controlled substance crime in the fourth degree are:

First, the defendant unlawfully sold one or more mixtures containing ________.[1]

"To sell" means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, to offer or agree to do the same, to possess with intent to do the same, or to manufacture. ["To manufacture" means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.]

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

Second, the defendant knew or believed that the substance sold was (a) mixture(s) containing ________ (a controlled substance).[2]

Third, the defendant's sale was unlawful. (The defendant had no legal authority to sell ____.)

Fourth, the defendant's act(s) took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find

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20.24

[1] A schedule I, II, or III controlled substance, except marijuana or tetrahydrocannabinols.

[2] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 152.024, subd. 1(1).

See M.S.A. § 152.01 for the definitions of sell, manufacture, and mixture. A sale requires more than a temporary surrender of the controlled substance. *State v. Barrow*, __ N.W.2d __ (Minn. 2015).

CRIMJIG 20.25

CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE—SALE TO A MINOR—DEFINED

Under Minnesota law, whoever unlawfully sells one or more mixtures containing ________[1] to a person under the age of eighteen is guilty of a crime.

COMMENT

M.S.A. § 152.024, subd. 1(2).

20.25

[1] A Schedule IV or V controlled substance.

CRIMJIG 20.26

CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE—SALE TO A MINOR—ELEMENTS

The elements of a controlled substance crime in the fourth degree are:

First, the defendant sold one or more mixtures containing ________.[1]

"To sell" means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, to offer or agree to do the same, to possess with intent to do the same, or to manufacture. ["To manufacture" means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.]

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

Second, the defendant knew or believed that the substance sold was (a) mixture(s) containing ________ (a controlled substance).[2]

Third, the defendant sold the ________ to a person under the age of eighteen. Mistake of age is not a defense.

Third, the defendant's sale was unlawful. (The defendant had no legal authority to sell ____.)

Fourth, the defendant's act(s) took place on (or about) ________ in ________ County.

20.26

[1] A Schedule IV or V controlled substance.

[2] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 152.024, subd. 1(4).

See M.S.A. § 152.01 for the definitions of sell, manufacture, and mixture.

Mistake of age is not an affirmative defense to a charge of third degree controlled-substance crime. *See State v. Skapyak*, 702 N.W.2d 331 (Minn. App. 2005). It would appear the same rationale would apply in cases of fourth degree controlled substance crimes.

CRIMJIG 20.27

CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE—SALE—SCHOOL/PARK/PUBLIC HOUSING ZONE/DRUG TREATMENT FACILITY—DEFINED

Under Minnesota law, whoever unlawfully sells any amount of marijuana or tetrahydrocannabinols in a [school zone] [park zone] [public housing zone] [drug treatment facility], except a small amount for no remuneration, is guilty of a crime.

COMMENT

M.S.A. § 152.024, subd. 1.

See M.S.A. § 123.932, subd. 3, for the definition of a nonpublic school.

CRIMJIG 20.28

CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE—SALE—SCHOOL/PARK/PUBLIC HOUSING ZONE—ELEMENTS

The elements of a controlled substance crime in the fourth degree are:

First, the defendant unlawfully sold one or more mixtures containing marijuana or tetrahydrocannabinols.

"To sell" means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, to offer or agree to do the same, to possess with intent to do the same, or to manufacture. ["To manufacture" means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, and their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.] A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

Second, the defendant knew or believed that the substance sold was (a) mixture(s) containing marijuana or tetrahydrocannabinols.

Third, the amount sold was (over 42.5 grams) (or) (the amount was 42.5 grams or less and the defendant received remuneration for the marijuana. "Remuneration" means payment of money or other compensation.)

Fourth, the sale took place in a [school zone] [park zone] [public housing zone] [drug treatment facility].

[A "school zone" is any property owned, leased, or controlled by a school district or an organization operating a nonpublic school[1] where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.] [A school zone also includes the area surrounding the school property to a distance of 300 feet or one city block, whichever is greater, beyond the school property.] [A school zone also includes the area within a school bus when the school bus[2] is being used to transport one or more elementary of secondary school students.] [A "park zone" is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. "Park zone" includes the area within (three hundred feet) (or) (one city block,) (whichever distance is greater), of the park boundary.] [A "public housing zone" is a public housing project or development administered by a local housing agency, plus the area within (three hundred feet of the property's boundary,) (or) (one city block,) (whichever distance is greater).] [A "drug treatment facility" is a licensed residential drug treatment facility, and includes any property owned, leased, or controlled by the facility.]

Fifth, the defendant's sale was unlawful. (The defendant had no legal authority to sell _____.)

Sixth, defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See M.S.A. § 152.024, subd. 1(4).

20.28

[1] *See* M.S.A. § 123.932, subd. 3, for the definition of a nonpublic school.

[2] *See* M.S.A. § 169.011, subd. 71, for the definition of a school bus.

A sale requires more than a temporary surrender of the controlled substance. *State v. Barrow*, __ N.W.2d __ (Minn. 2015).

The statute does not apply to a small amount of marijuana for no remuneration. M.S.A. § 152.024, subd. 1(4).

In cities where no grid system is present, the term “one city block” does not apply and the transaction must take place within 300 feet of the park for the statute to apply. *See State v. Estrella*, 700 N.W.2d 496 (Minn. App. 2005).

When land surrounding a public park is divided into rectangular blocks bounded by city streets, the area “within one city block . . . of the park boundary” include the entire area of block adjacent to the park. *State v. Carufel*, 783 N.W.2d 539 (Minn. 2010) (a controlled substance case). This holding would presumably also apply to a school zone or public housing zone.

CRIMJIG 20.29

CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE—CONSPIRACY/MINOR—DEFINED

Under Minnesota law, whoever (conspires with) (employs) a person under the age of eighteen to unlawfully sell one or more mixtures containing ________[1] is guilty of a crime.

COMMENT

M.S.A. § 152.024, subd. 1(3).

20.29

[1] A Schedule IV or V controlled substance.

CRIMJIG 20.30

CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE—CONSPIRACY/MINOR—ELEMENTS

The elements of a (conspiring with) (employing) a minor to unlawfully sell a controlled substance in the fourth degree are:

First, the defendant (conspired with) (employed) (________) (another) to unlawfully sell one or more mixtures containing ________.[1]

""To sell" means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, to offer or agree to do the same, to possess with intent to do the same, or to manufacture. ["To manufacture" means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.]

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

A person conspires with another to commit a crime when the person agrees to commit the crime, and the person or another party to the conspiracy does an overt act for the purpose of furthering the conspiracy.[2]

Second, (________) (the other person) was under the age of eighteen.

Third, the sale was unlawful. (The defendant had no legal authority to sell ____.)

20.30

[1] A Schedule IV or V controlled substance.

[2] The court may wish to instruct further on conspiracy, Using CRIMJIGs 5.06 to 5.16.

Fourth, the defendant('s) (acts) (entered the agreement and an overt act) took place) on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 152.024, subd. 1(3).

See M.S.A. § 152.01 for the definitions of sell, manufacture, and mixture.

CRIMJIG 20.31

CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE—POSSESSION—DEFINED

Under Minnesota law, whoever unlawfully possesses one or more mixtures of (phencyclidine) (or) (an hallucinogen) packaged in dosage units and equaling ten or more dosage units is guilty of a crime.

COMMENT

M.S.A. § 152.024, subd. 2(1).

CRIMJIG 20.32

CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE—POSSESSION—ELEMENTS

The elements of controlled substance crime in the fourth degree are:

First, the defendant knowingly possessed one or more mixtures of (phencyclidine) (or) (an hallucinogen.

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the controlled substance) at a given time. A person is in constructive possession of ________ (the controlled substance) if ________ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________ (the controlled substance). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of ________ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the controlled substance), whether exclusively or jointly with others.]

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

Second, the (phencyclidine) (or) (hallucinogen) was packaged in dosage units and equalled ten or more dosage units of ________.[1]

Third, the defendant knew or believed that the substance the defendant possessed was ________ (a controlled substance).[2]

Fourth, the defendant's possession was unlawful. (The defendant had no legal authority to possess______.)

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 152.024, subd. 2(1).

The requirements for constructive possession are drawn from *State v. Mollberg*, 310 Minn. 376, 246 N.W.2d 463 (1976), and *State v. Florine*, 303 Minn. 103, 226 N.W.2d 609 (1975). Possession need not be by the defendant alone, but may be shared with others. *State v. LaBarre*, 292 Minn. 228, 195 N.W.2d 435 (1972). See also *State v. Hunter*, 857 N.W.2d 537 (Minn. App. 2014), in which the Court of Appeals held that possession requires dominion and control over the controlled substance and not the place where the controlled substance is found.

20.32

[1] Phencyclidine or a hallucinogen.

[2] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

CRIMJIG 20.33

CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE—SALE—MARIJUANA OR SCHEDULE IV—DEFINED

Under Minnesota law, whoever unlawfully sells one or more mixtures containing ((marijuana) (or) (tetrahydrocannabinols) (except a small amount of marijuana for no remuneration)) (________[1]) is guilty of a crime.

COMMENT

M.S.A. § 152.025, subd. 1(a)(1) and (2).

See M.S.A. § 152.01 for the definition of a small amount of marijuana.

20.33

[1] A Schedule IV controlled substance.

CRIMJIG 20.34

CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE—SALE—MARIJUANE OR SCHEDULE IV—ELEMENTS

The elements of sale of a controlled substance crime in the fifth degree are:

First, the defendant sold one or more mixtures containing (marijuana or tetrahydrocannabinols) (________[1]).

"To sell" means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, to offer or agree to do the same, to possess with intent to do the same, or to manufacture. ["To manufacture" means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.]

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

Second, the defendant knew or believed that the substance the defendant sold was ________ (a controlled substance).[2]

[Third, the amount of marijuana or tetrahydrocannabinols sold was (over 42.5 grams) (or) the amount was 42.5 grams or less and the defendant received remuneration for the marijuana. "Remuneration" means payment of money or other compensation.]

[Third] [Fourth], the defendant's possession was unlawful. (The defendant had no legal authority to possess______.)

20.34

[1] A Schedule IV controlled substance.

[2] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

[Fourth] [Fifth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 152.025, subd. 1.

See M.S.A. § 152.01, subd. 16, for the definition of a small amount of marijuana.

A sale requires more than a temporary surrender of the controlled substance. *State v. Barrow*, ___ N.W.2d ___ (Minn. 2015).

In *State v. Hart*, 393 N.W.2d 707 (Minn. App. 1986), the Court of Appeals held that it was not necessary that the defendant realize a profit from the transaction for it to constitute "remuneration." The receipt of money in exchange for marijuana was sufficient evidence to support a felony conviction for distribution of marijuana.

In *State v. Gallus*, 481 N.W.2d 116 (Minn. App. 1992), a prosecution in which the quantity of the marijuana possessed was at issue, the Court of Appeals held that the weight of marijuana must be determined and proven by the prosecution beyond a reasonable doubt, without inclusion of the mature stalks of the marijuana plants. The Court ruled that the prosecution must prove that either the marijuana weighed more than 42.5 grams exclusive of mature stalks, or the marijuana stalks were immature.

In *State v. Blahowski*, 499 N.W.2d 521 (Minn. App. 1993), the Court of Appeals clarified *State v. Gallus* by holding that, in a prosecution for possession of marijuana with intent to sell, the prosecution did not have to prove that the defendant intended to sell more than a small amount of marijuana.

CRIMJIG 20.35

CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE—POSSESSION—DEFINED

Under Minnesota law, whoever unlawfully possesses one or more mixtures containing ________[1] is guilty of a crime.

COMMENT

M.S.A. § 152.025, subd. 2(a)(1).

20.35

[1] A Schedule I, II, III or IV controlled substance except a small amount of marijuana.

CRIMJIG 20.36

CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE—POSSESSION—ELEMENTS

The elements of possession of a controlled substance in the fifth degree are:

First, the defendant unlawfully possessed one or more mixtures containing ________.[1]

[[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the controlled substance) at a given time. A person is in constructive possession of ________ (the controlled substance) if ________ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________ (the controlled substance). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of ________ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the controlled substance), whether exclusively or jointly with others.]

20.36

[1] A Schedule I, II, III or IV controlled substance except a small amount of marijuana.

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

Second, the defendant knew or believed that the substance the defendant possessed was ________ (a controlled substance).

[Third, the amount of marijuana possessed by the defendant was more than 42.5 grams.]

[Third] [Fourth], the defendant's possession was unlawful. (The defendant had no legal authority to possess_____.)

[Fourth] [Fifth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 152.025, subd. 2(1). The statute does not apply to a small amount of marijuana. If that matter is an issue at trial, the bracketed portion should be read.

In *State v. Hart*, 393 N.W.2d 707 (Minn. App. 1986), the Court of Appeals held that it was not necessary that the defendant realize a profit from the transaction for it to constitute "remuneration". The receipt of money in exchange for marijuana was sufficient evidence to support a felony conviction for distribution of marijuana.

In *State v. Gallus*, 481 N.W.2d 116 (Minn. App. 1992), a prosecution in which the quantity of the marijuana possessed was at issue, the Court of Appeals held that the weight of marijuana must be determined and proven by the prosecution beyond a reasonable doubt, without inclusion of the mature stalks of the marijuana plants. The Court ruled that the prosecution must prove that either the marijuana weighed more than 42.5 grams exclusive of mature stalks, or the marijuana stalks were immature.

In *State v. Blahowski*, 499 N.W.2d 521 (Minn. App. 1993), the Court of Appeals clarified *State v. Gallus* by holding that, in a prosecution for possession of marijuana with intent to sell, the prosecution did not have to prove that the defendant intended to sell more than a small amount of marijuana.

The requirements for constructive possession are drawn from *State v. Mollberg*, 310 Minn. 376, 246 N.W.2d 463 (1976), and *State v. Florine*, 303 Minn. 103, 226 N.W.2d 609 (1975). Possession need not be by the defendant alone, but may be shared with others. *State v. LaBarre*, 292 Minn. 228, 195 N.W.2d 435 (1972). See also *State v. Hunter*, 857 N.W.2d 537 (Minn. App. 2014), in which the Court of Appeals held that possession requires dominion and control over the controlled substance and not the place where the controlled substance is found.

CRIMJIG 20.37

CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE—PROCUREMENT BY FRAUD OR FALSE IMPERSONATION—DEFINED

Under Minnesota law, whoever (procures or attempts to procures) (possesses) (has control over) ________[1] by means of

[1] fraud, deceit, misrepresentation, or subterfuge,

[2] using a false name or giving false credit,

[3] falsely assuming the title of, or falsely representing any person to be, (a manufacturer, wholesaler, pharmacist, physician, doctor of osteopathy, dentist, veterinarian, or podiatrist, or an authorized person) for the purpose of obtaining ________,

is guilty of a crime.

COMMENT

M.S.A. § 152.025, subd. 2(a)(2).

20.37

[1] A Schedule I, II, III or IV controlled substance except a small amount of marijuana.

CRIMJIG 20.38

CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE—PROCUREMENT BY FRAUD OR FALSE IMPERSONATION—ELEMENTS

The elements of controlled substance crime in the fifth degree are:

First, the defendant knowingly (procured or attempted to procure) (possessed) (had control over) ________.[1]

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the controlled substance) at a given time. A person is in constructive possession of ________ (the controlled substance) if ________ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________ (the controlled substance[2]). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of ________ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive posses-

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20.38

[1] A Schedule I, II, III or IV controlled substance except a small amount of marijuana.

[2] In *State v. Hunter*, 857 N.W.2d 537 (Minn. App 2014), the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

sion of ________ (the controlled substance), whether exclusively or jointly with others.]

[1] Second, the defendant obtained or attempted to obtain the ________ by fraud, deceit, misrepresentation, or subterfuge.

[2] Second, the defendant obtained or attempted to obtain the ________ by using a false name, or giving false credit.

[3] Second, the defendant obtained or attempted to obtain the ________ by falsely assuming the title of, or falsely representing any person to be, a (manufacturer) (wholesaler) (pharmacist) (physician) (doctor of osteopathy) (dentist) (veterinarian) (podiatrist) (or) (an authorized person).

[Third, the amount of marijuana possessed by the defendant was more than 42.5 grams.]

[Third] [Fourth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

The requirements for constructive possession are drawn from *State v. Mollberg*, 310 Minn. 376, 246 N.W.2d 463 (1976), and *State v. Florine*, 303 Minn. 103, 226 N.W.2d 609 (1975). Possession need not be by the defendant alone, but may be shared with others. *State v. LaBarre*, 292 Minn. 228, 195 N.W.2d 435 (1972). See also *State v. Hunter*, ___ N.W.2d ___ (Minn. App. 2014), in which the Court of Appeals held that possession requires dominion and control over the controlled substance and not the place where the controlled substance is found.

See also State v. DeGidio, 277 Minn. 218, 152 N.W.2d 179 (1967).

CRIMJIG 20.39

OTHER CONTROLLED SUBSTANCE OFFENSE INCLUDING SALVIA DIVINORUM AND SYNTHETIC CANNABINOIDS—SALE—DEFINED

Under Minnesota law, whoever unlawfully sells ________[1] is guilty of a crime.

COMMENT

M.S.A. § 152.027, subd. 1 (schedule V controlled substance), 5 (salvia divinorum), 6 (synthetic cannabinoids).

20.39

[1] A Schedule V controlled substance, salvia divinorum, or synthetic cannabinoids.

CRIMJIG 20.40

OTHER CONTROLLED SUBSTANCE OFFENSE INCLUDING SALVIA DIVINORUM AND SYNTHETIC CANNABINOIDS—SALE—ELEMENTS

The elements of sale of (a controlled substance) (salvia divinorum) (synthetic cannabinoids) offense are:

First, the defendant sold one or more mixtures containing ________.[1]

"To sell" means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, to offer or agree to do the same, to possess with intent to do the same, or to manufacture. ["To manufacture" means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.] A "mixture" is a preparation compound, mixture, or substance containing a controlled substance, regardless of its purity.

Second, the defendant knew or believed that the substance the defendant sold was ________ (a controlled substance).[2]

[Third, the defendant received remuneration.[3] "Remuneration" means cash or some other form of compensation."]

[Third] [Fourth], the defendant's sale was unlawful. (The defendant had no legal authority to sell ____.)

[Fourth] [Fifth], the defendant's act took place on (or about) ________ in ________ County.

20.40

[1] A Schedule V controlled substance, salvia divinorum, or synthetic cannabinoids.

[2] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

[3] Use this element when the sale involves synthetic cannabinoids. See M.S.A. § 152.027, subd. 6.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 20.41

OTHER CONTROLLED SUBSTANCE OFFENSE—POSSESSION—DEFINED

Under Minnesota law, whoever unlawfully possesses one or more mixtures containing ________[1] is guilty of a crime.

COMMENT

M.S.A. § 152.027, subd. 2.

20.41

[1] A Schedule V controlled substance, salvia divinorum, synthetic cannabinoids.

CRIMJIG 20.42

OTHER CONTROLLED SUBSTANCE OFFENSE INCLUDING SALVIA DIVINORUM AND SYNTHETIC CANNABINOIDS—POSSESSION—ELEMENTS

The elements of possession of controlled substance offense are:

First, the defendant knowingly possessed one or more mixtures containing ________.[1]

A "mixture" is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the controlled substance) at a given time. A person is in constructive possession of ________ (the controlled substance) if ________ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________ (the controlled substance). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of ________ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive posses-

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20.42

[1] A Schedule V controlled substance, salvia divinorum or synthetic cannabinoids.

sion of ________ (the controlled substance), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the substance the defendant possessed was ________ (a controlled substance).[2]

Third, the defendant's possession was unlawful. (The defendant had no legal authority to possess______.)

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

The requirements for constructive possession are drawn from *State v. Mollberg*, 310 Minn. 376, 246 N.W.2d 463 (1976), and *State v. Florine*, 303 Minn. 103, 226 N.W.2d 609 (1975). Possession need not be by the defendant alone, but may be shared with others. *State v. LaBarre*, 292 Minn. 228, 195 N.W.2d 435 (1972).

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[2] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

CRIMJIG 20.43

POSSESSION OF A SMALL AMOUNT OF MARIJUANA IN A MOTOR VEHICLE—DEFINED

Under Minnesota law, whoever (is the owner of a private motor vehicle) (the driver of the motor vehicle if the owner is not present) and

[1] possesses on (his) (her) person,

[2] knowingly keeps or allows to be kept in a motor vehicle within the area normally occupied by the driver or passengers, more than 1.4 grams of marijuana, is guilty of a crime.

COMMENT

M.S.A. § 152.027, subd. 3.

CRIMJIG 20.44

POSSESSION OF A SMALL AMOUNT OF MARIJUANA IN A MOTOR VEHICLE—ELEMENTS

The elements of (possession of) (keeping) (allowing to be kept) a small amount of marijuana in a motor vehicle are:

First, the defendant was (the owner of a private motor vehicle) (the driver of a private motor vehicle while the owner was not present).

[1] Second, the defendant possessed on (his) (her) person more than 1.4 grams of marijuana.

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the controlled substance) at a given time. A person is in constructive possession of ________ (the controlled substance) if ________ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________ (the controlled substance). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of ________ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the controlled substance), whether exclusively or jointly with others.]

[2] Second, the defendant knowingly (kept) (allowed to

be kept) more than 1.4 grams of marijuana in the motor vehicle, within the area of the motor vehicle normally occupied by the driver or passengers. [This area of the vehicle does not include the trunk of the motor vehicle, when such vehicle is equipped with a trunk or another area of the vehicle not normally occupied by the driver or passengers, if the vehicle is not equipped with a trunk. A utility or glove compartment is within the area occupied by the driver and passengers.]

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Motor vehicle is defined in M.S.A. § 169.011, subd. 42.

The second element has two distinct concepts: The possession, keeping, or allowing of marijuana, and proof that the substance is, in fact, marijuana. *See State v. Dick*, 253 N.W.2d 277 (Minn.1977), regarding the requirement that the State prove the identity of the substance in question. Marijuana is defined in M.S.A. § 152.01, subd. 9. *But see State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009), in which the Court of Appeals held the defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was.

The applicable parts of the bracketed portion should be read only where the defendant is charged with keeping or allowing marijuana to be kept in a motor vehicle. It is not applicable if the defendant is charged with possessing the marijuana on his or her person.

CRIMJIG 20.45

(DELIVERY) (POSSESSION FOR DELIVERY) (MANUFACTURE FOR DELIVERY) OF DRUG PARAPHERNALIA—DEFINED

Under Minnesota law, whoever knowingly or intentionally (delivers drug paraphernalia) (possesses drug paraphernalia for delivery) (manufactures drug paraphernalia for delivery) is guilty of a crime.

COMMENT

M.S.A. § 152.093

In *State v. Christensen*, 439 N.W.2d 389 (Minn. App. 1989), *cert. denied*, 493 U.S. 936, 110 S. Ct. 329, 107 L.Ed.2d 319 (1989), the Court of Appeals rejected a claim that M.S.A. §§ 152.01, sub. 18, and 152.093 (the drug paraphernalia statutes) were unconstitutionally vague for failure to define prohibited conduct.

In *City of St. Paul v. Various Items of Drug Paraphernalia*, 474 N.W.2d 413 (Minn. App. 1991), the Court of Appeals reaffirmed its decision in *State v. Christensen*, 439 N.W.2d 389 (Minn. App. 1989), *cert. denied*, 493 U.S. 936, 110 S. Ct. 329, 107 L.Ed.2d 319 (Minn. 1989).

CRIMJIG 20.46

(DELIVERY) (POSSESSION FOR DELIVERY) (MANUFACTURE FOR DELIVERY) OF DRUG PARAPHERNALIA—ELEMENTS

The elements of the crime are:

First, the defendant knowingly or intentionally (delivered drug paraphernalia) (possessed drug paraphernalia for delivery) (manufactured drug paraphernalia for delivery).

"Drug paraphernalia" means equipment, products, and materials of any kind knowingly or intentionally used primarily in (1) manufacturing a controlled substance, (2) injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, (3) testing the strength, effectiveness, or purity of a controlled substance, or (4) enhancing the effect of a controlled substance.

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (an item) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the item) at a given time. A person is in constructive possession of ________ (an item) if ________ (the item) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________[1] (the item). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive

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20.46

[1] In *State v. Hunter*, 857 N.W.2d 537 (Minn. App 2014) the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

possession of ________ (an item), possession is exclusive. If two or more persons share actual or constructive possession of ________ (an item), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the item), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the equipment, products, or materials (was) (were) drug paraphernalia.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 152.093.

The requirements for constructive possession are drawn from *State v. Mollberg*, 310 Minn. 376, 246 N.W.2d 463 (1976), and *State v. Florine*, 303 Minn. 103, 226 N.W.2d 609 (1975). Possession need not be by the defendant alone, but may be shared with others. *State v. LaBarre*, 292 Minn. 228, 195 N.W.2d 435 (1972). See also *State v. Hunter*, __ N.W.2d __ (Minn. App. 2014), in which the Court of Appeals held that possession requires dominion and control over the controlled substance and not the place where the controlled substance is found.

CRIMJIG 20.47

DELIVERY OF DRUG PARAPHERNALIA TO A MINOR—DEFINED

Under Minnesota law, any person 18 years of age or older, who knowingly or intentionally delivers drug paraphernalia to a person under 18 years of age, and who is at least three years (his) (her) junior, is guilty of a crime.

COMMENT

M.S.A. § 152.094.

CRIMJIG 20.48

DELIVERY OF DRUG PARAPHERNALIA TO A MINOR—ELEMENTS

The elements of the crime are:

First, the defendant knowingly or intentionally delivered drug paraphernalia to ________.

Second, the defendant knew or believed that the item or items delivered (was) (were) drug paraphernalia.

"Drug paraphernalia" means equipment, products, and materials of any kind knowingly or intentionally used primarily in (1) manufacturing a controlled substance, (2) injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, (3) testing the strength, effectiveness, or purity of a controlled substance, or (4) enhancing the effect of a controlled substance.

Third, the defendant was 18 years or older at the time of the offense.

Fourth, ________ was less than 18 years of age at the time of the offense.

Fifth, the defendant was more than three years older than ________ at the time of the offense.

Sixth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 152.094.

In *Nelson v. Sandkamp*, 227 Minn. 177, 34 N.W.2d 640 (1948), the

Supreme Court held that "in computing a person's age . . . he . . . reaches his next year in age at the first moment of the day prior to the anniversary date of his birth." *But see State v. Stangel*, 284 N.W.2d 4 (Minn. 1979), where the Supreme Court held that the rule does not apply for purposes of determining juvenile court jurisdiction, and that a juvenile reaches his next year of age on his birthday.

CRIMJIG 20.49

ADVERTISEMENT OF DRUG PARAPHERNALIA—DEFINED

Under Minnesota law, whoever knowingly or intentionally places in any newspaper, magazine, handbill, or other publication any advertisement or promotion for the sale of drug paraphernalia, is guilty of a crime.

COMMENT

M.S.A. § 152.095.

CRIMJIG 20.50

ADVERTISEMENT OF DRUG PARAPHERNALIA—ELEMENTS

The elements of the crime are:

First, the defendant knowingly or intentionally placed an advertisement or promotion for the sale of drug paraphernalia in ________ (identify publication or type of publication).

"Drug paraphernalia" means equipment, products, and materials of any kind knowingly or intentionally used primarily in (1) manufacturing a controlled substance, (2) injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, (3) testing the strength, effectiveness, or purity of a controlled substance, or (4) enhancing the effect of a controlled substance.

Second, ________ was a newspaper, magazine, handbill, or other publication, within the commonly accepted meaning of those terms.

Third, the defendant knew or believed that the (item) (items) the defendant (was) (were) advertising or promoting (was) (were) drug paraphernalia.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 20.51

DISTRIBUTION OF SIMULATED CONTROLLED SUBSTANCES—DEFINED

Under Minnesota law, whoever knowingly sells, transfers, or delivers a non-controlled substance under circumstances that would lead a reasonable person to believe that the substance was a controlled substance is guilty of a crime.

COMMENT

M.S.A. § 152.097.

The Committee notes that there are two other offenses under M.S.A. § 152.097, but they are so infrequently charged that pattern jury instructions have not been drafted.

CRIMJIG 20.52

DISTRIBUTION OF SIMULATED CONTROLLED SUBSTANCES—ELEMENTS

The elements of distribution of simulated controlled substances are:

First, the defendant knowingly sold, transferred, or delivered (__________).[1] __________ is a non-controlled substance. This means that the sale, transfer, or delivery of the non-controlled substance was intentional on the part of the defendant. It is not a defense that the defendant believed the non-controlled substance to actually be a controlled substance.

Second, the sale, transfer, or delivery of the non-controlled substance was done under circumstances that would lead a reasonable person to believe that the substance was a controlled substance.

Factors you may consider in determining whether the circumstances were such as to lead a reasonable person to believe that the substance was a controlled substance include, but are not limited to,

(a) The non-controlled substance was packaged in a manner normally used for the illegal delivery of controlled substances, or

(b) The delivery or attempted delivery included an exchange of or demand for money or other valuable property as consideration for delivery of the non-controlled substance and the amount of the consideration, was substantially in excess of the reasonable value of the non-controlled substance, or

(c) The physical appearance of the non-controlled substance is substantially identical to a specified controlled substance.

20.52

[1] The substance alleged in the complaint.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 20.53

PROHIBITED DRUGS—TAX STAMPS—DEFINED

Under Minnesota law, whoever knowingly distributed or possessed controlled substances or marijuana without affixing the appropriate stamps, labels, or other official indicia, is guilty of a crime.

COMMENT

M.S.A. § 297D.09, subd. 1.

CRIMJIG 20.54

PROHIBITED DRUGS—TAX STAMPS—ELEMENTS

The elements of this offense are:

First, the defendant, in violation of Minnesota law, manufactured, produced, shipped, transported, or imported into Minnesota, or in any manner acquired or possessed, more than (42 1/2 grams of marijuana) (seven or more grams of any controlled substance) (ten or more dosage units of any controlled substance not sold by weight). The weight of the (marijuana) (________) (controlled substance) includes all material, compound, mixture, or preparation that is added to it.

Second, the defendant knowingly distributed or possessed (marijuana) (________) (a controlled substance) without affixing the appropriate stamps, labels, or other official indicia as established by the Commissioner of Revenue.

Third, the defendant's act took place on or about ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 20.55

PERMISSIVE INFERENCE OF KNOWING POSSESSION—RESIDENCES

[The Committee recommends no instruction be given.]

COMMENT

Although M.S.A. § 152.028, subd. 1, creates a permissive inference of knowing possession in a residence, the Committee cannot recommend that an instruction be given. In *State v. Litzau*, 650 N.W.2d 177 (Minn. 2002), a case involving the permissive inference of knowing possession in an automobile, the Supreme Court, citing to *State v. Olson*, 482 N.W.2d 212 (Minn. 1992), held that, as a general rule, advising jurors that a particular fact may be inferred from other particular facts, if proved, should be avoided. It also noted that the instruction in this case focused the jury on some facts, rather than all the facts. "Because the instruction focused the jury on two isolated facts, the instruction suggested that the jury could convict without consideration of all the evidence; and under these circumstances submission of the instruction was plain error."

CRIMJIG 20.56

PERMISSIVE INFERENCE OF KNOWING POSSESSION—PASSENGER AUTOMOBILES

[The Committee recommends no instruction be given.]

COMMENT

Although M.S.A. § 152.028, subd. 2, creates a permissible inference of knowing possession in an automobile, the Committee cannot recommend that such an instruction be given. The Supreme Court, in *State v. Litzau*, 650 N.W.2d 177 (Minn. 2002), citing to *State v. Olson*, 482 N.W.2d 212 (Minn. 1992) held that, as a general rule, advising jurors that a particular fact may be inferred from other particular facts, if proved, should be avoided. It also noted that the instruction in this case focused the jury on some facts, rather than all the facts. "Because the instruction focused the jury on two isolated facts, the instruction suggested that the jury could convict without consideration of all the evidence; and under these circumstances submission of the instruction was plain error."

CRIMJIG 20.57

PRESCRIPTION DRUG PURCHASE/RECEIPT—DEFINED

Under Minnesota law, whoever knowingly purchases or receives ________[1] from a source other than a person or entity licensed under the laws of the State of Minnesota is guilty of a crime.

COMMENT

M.S.A. § 151.46.

20.57

[1] Whether or not a substance is a prescription drug (which is defined under M.S.A. § 151.44(d) as a drug required by federal or state law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to 21 U.S.C.A. §§ 811 and 812) is a legal issue to be decided by the trial court.

CRIMJIG 20.58

PRESCRIPTION DRUG PURCHASE/RECEIPT—ELEMENTS

The elements of (purchasing) (receipt of) a prescription drug are:

First, the defendant knowingly (purchased) (received) ________.[1]

Second, the source of the ________ was a person or entity not licensed under the laws of the State of Minnesota to distribute ________ (the prescription drug).

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 151.46.

20.58

[1] Whether a particular substance is a prescription drug is a legal question to be determined by the trial court. This instruction has been drafted accordingly.

CRIMJIG 20.59

USE OF DRUGS TO INJURE OR FACILITATE CRIME—DEFINED

Under Minnesota law, whoever administers to another person, or causes another person to take, any poisonous, stupefying, overpowering, narcotic, or anesthetic substance with the intent to injure the other person or to facilitate the commission of a crime, is guilty of a crime.

COMMENT

M.S.A. § 609.235.

CRIMJIG 20.60

USE OF DRUGS TO INJURE OR FACILITATE CRIME—ELEMENTS

The elements of the crime are:

First, the defendant (administered ________ to ________.) (caused ________ to take ________.)

Second, ________ was a (poisonous) (stupefying) (overpowering) (narcotic) (anesthetic) substance.

Third, the defendant administered the ________ or caused the ________ to be taken, with the intention of injuring ________, or with the intention of facilitating the commission of (a crime) (the crime of ________).

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.235.

When the substance is a narcotic as defined in the Chapter on controlled substances (M.S.A., Chapter 152), the jury may be so instructed in the second element.

CRIMJIG 20.61

GREAT BODILY HARM CAUSED BY DISTRIBUTION OF DRUGS—DEFINED

Under Minnesota law, whoever proximately causes great bodily harm by, directly or indirectly, unlawfully and intentionally selling, giving away, bartering, delivering, exchanging, distributing, or administering a Schedule I or II controlled substance, is guilty of a crime.

COMMENT

M.S.A. § 609.228.

CRIMJIG 20.62

GREAT BODILY HARM CAUSED BY DISTRIBUTION OF DRUGS—ELEMENTS

The elements of causing great bodily harm by distribution of drugs are:

First, it must be proven that ________ suffered great bodily harm. "Great bodily harm" means bodily harm that causes a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any part of the body, or other serious bodily harm.

Second, the defendant unlawfully sold, gave away, bartered, delivered, exchanged, distributed, or administered ________ to (________) (another).

Third, the defendant acted intentionally[1] in selling, giving away, bartering, delivering, exchanging, distributing, or administering ________ to (________) (another).

Fourth, great bodily harm to ________ was caused, directly or indirectly, by the defendant's sale, gift, barter, delivery, exchange, distribution, or administration of ________[2] to (________) (another). A "cause" is something that had a substantial part in bringing about the harm, either immediately or through happenings that follow one after another.

Fifth, the defendant's acts took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

20.62

[1] As this is a felony offense, a mens rea requirement must be read into the statute. See *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012).

[2] A controlled substance listed as a Schedule I or II substance, other than marijuana or tetrahydrocannabinols.

CRIMJIG 20.63

CONTROLLED SUBSTANCE CRIME— METHAMPHETAMINE MANUFACTURER— POSSESSION OF PRECURSORS—DEFINED

Under Minnesota law, whoever possesses any chemical reagents or precursors with intent to manufacture methamphetamine is guilty of a crime.

COMMENT

M.S.A. § 152.0262, subd. 1.

CRIMJIG 20.64

CONTROLLED SUBSTANCE CRIME—METHAMPHETAMINE MANUFACTURER—POSSESSION OF PRECURSORS—ELEMENTS

The elements of a possession of methamphetamine precursors are:

First, the defendant possessed a chemical reagent or precursor to the manufacture of methamphetamine. "Chemical reagent or precursor" includes ____[1] or any similar substances that can be used to manufacture methamphetamine.

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (a chemical reagent or precursor to the manufacture of methamphetamine) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the chemical reagent or precursor to the manufacture of methamphetamine) at a given time. A person is in constructive possession of ________ (a chemical reagent or precursor to the manufacture of methamphetamine) if ________ (the chemical reagent or precursor to the manufacture of methamphetamine) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________[2] (the chemical reagent or precursor to the manufacture of methamphetamine item). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive

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20.64

[1] *See* M.S.A. § 152.021, subd. 2a(b) for the list of reagents and precursors.

[2] In State v. Hunter, __N.W.2d __ (Minn. App 2015) the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

possession of ________ (a chemical reagent or precursor to the manufacture of methamphetamine), possession is exclusive. If two or more persons share actual or constructive possession of ________ (a chemical reagent or precursor to the manufacture of methamphetamine), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the chemical reagent or precursor to the manufacture of methamphetamine), whether exclusively or jointly with others.]

Second, the defendant intended to use the chemical reagents and precursors to manufacture methamphetamine.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 20.65

CONTROLLED SUBSTANCE CRIME—METHAMPHETAMINE MANUFACTURER—ANHYDROUS AMMONIA OFFENSES—DEFINED

Under Minnesota law, whoever:

[1] steals or unlawfully takes or carries away any amount of anhydrous ammonia

[2] purchases, possesses, transfers, or distributes any amount of anhydrous ammonia, knowing or having reason to know that the anhydrous ammonia would be used to unlawfully manufacture a controlled substance

[3] places, have placed or possesses anhydrous ammonia in a container that is not designed, constructed, maintained, or authorized to contain or transport anhydrous ammonia

[4] transports anhydrous ammonia in a container that is not designed, constructed, maintained, or authorized to transport anhydrous ammonia

[5] uses, delivers, receives, sells, or transports a container designed and constructed to contain anhydrous ammonia without the express consent of the owner or authorized custodian of the container

[6] tampers with any equipment or facility used to contain, store, or transport anhydrous ammonia

is guilty of a crime.

COMMENT

M.S.A. § 152.136, subd. 2.

CRIMJIG 20.66

CONTROLLED SUBSTANCE CRIME—METHAMPHETAMINE MANUFACTURER—ANHYDROUS AMMONIA OFFENSES—ELEMENTS

The elements of an anhydrous ammonia offense are:

[1] First, the defendant (stole) (or) (unlawfully took or carried away) any amount of anhydrous ammonia. This means that the defendant intentionally (took) (used) (transferred) (concealed) (retained) the anhydrous ammonia on purpose and that the defendant knew or believed it was the property of another. ["Intentionally" means that the actor either has a purpose to do the thing or cause the result specified or believes that the act performed by the actor, if successful, will cause that result. The term "unlawful" means the defendant had no legal authority to act.

[2] First, defendant (purchased) (possessed) (transferred) (or) (distributed) any amount of anhydrous ammonia.

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (anhydrous ammonia) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the anhydrous ammonia) at a given time. A person is in constructive possession of ________ (anhydrous ammonia) if ________ (the anhydrous ammonia) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________[1] (the anhydrous ammonia). You may find that the element of possession, as that term is used in these instructions, is present if

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20.66

[1] In State v. Hunter, __N.W.2d __ (Minn. App 2015) the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (anhydrous ammonia), possession is exclusive. If two or more persons share actual or constructive possession of ________ (anhydrous ammonia), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the anhydrous ammonia), whether exclusively or jointly with others.]

Second, the defendant knew or had reason to know that the anhydrous ammonia would be used to unlawfully manufacture a controlled substance. The term "unlawful" means the defendant had no legal authority to act

[3] First, the defendant (placed) (has placed) (or) (possessed) anhydrous ammonia in a container that is not (designed) (constructed) (maintained) (or) (authorized) to contain or transport anhydrous ammonia. In order to be properly (designed) (constructed) (maintained) (or) (authorized) for the transportation of anhydrous ammonia, a container must [here insert appropriate regulations from Minn. Rules, Chapter 1513 or CFR, title 49—e.g., have a label on two sides of the container stating Anhydrous Ammonia and Inhalation Hazard at least two inches in height; have the UN designation for anhydrous ammonia of 1005; etc.]

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (anhydrous ammonia) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the anhydrous ammonia) at a given time. A person is in constructive possession of ________ (anhydrous ammonia) if ________ (the anhydrous ammonia) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________[2] (the anhydrous ammonia). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (anhydrous ammonia), possession is exclusive. If two or more persons share actual or constructive possession of ________ (anhydrous ammonia), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the anhydrous ammonia), whether exclusively or jointly with others.]

[4] First, the defendant transported anhydrous ammonia in a container that is not (designed) (constructed) (maintained) (or) (authorized) to transport anhydrous ammonia. In order to be properly (designed) (constructed) (maintained) (or) (authorized) for the transportation of anhydrous ammonia, a container must [here insert appropriate regulations from Minn. Rules, Chapter 1513 or CFR—e.g., have a label on two sides of the container stating Anhydrous Ammonia and Inhalation Hazard at least two inches in height; have the UN designation for anhydrous ammonia of 1005; etc.]

[5] First, the defendant (used) (delivered) (received) (sold) (or) (transported) a container designed and constructed to contain anhydrous ammonia.

Second, the defendant did so without the express consent of the owner or authorized custodian of the container.

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[2] In State v. Hunter, __N.W.2d __ (Minn. App 2015) the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

[6] First, the defendant tampered with any equipment or facility used to contain, store, or transport anhydrous ammonia. "Tamper" means action taken by a person not authorized to take that action by law or by the owner or authorized custodian of an anhydrous ammonia container or of equipment where anhydrous ammonia is used, stored, distributed, or transported.

[Second] [Third], the defendant's act took place on or about ____ in ____ County.

If you find that each of the elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proved beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 20.67

CONTROLLED SUBSTANCE CRIME—METHAMPHETAMINE MANUFACTURER—CHILDREN, VULNERABLE ADULTS, PUBLIC—DEFINED

Under Minnesota law, whoever knowingly

[1] manufactures or attempts to manufacture methamphetamine

[2] stores any chemical substance

[3] stores any methamphetamine waste products

[4] stores any methamphetamine paraphernalia

[A] in the presence of a (child) (or) (vulnerable adult)

[B] in the residence of a (child) (or) (vulnerable adult)

[C] in a building, structure, conveyance or outdoor location where a (child (or) (vulnerable adult) might reasonably be expected to be present

[D] in a room offered to the public for overnight accommodation

[E] in any multiple unit residential building

is guilty of a crime.

COMMENT

M.S.A. § 152.137, subd. 2(a)(1–4).

CRIMJIG 20.68

CONTROLLED SUBSTANCE CRIME—METHAMPHETAMINE MANUFACTURER—CHILDREN, VULNERABLE ADULTS, PUBLIC—ELEMENTS

The elements of endangering (a (child) (vulnerable adult) (the general public) by methamphetamine manufacture are:

[1] First, the defendant knowingly manufactured or attempted to manufacture methamphetamine. "Manufacture" means and includes the production, cultivation, quality control, and standardization by mechanical, physical, chemical, or pharmaceutical means, packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or by other process, of drugs.

[1] First, the defendant knowingly stored any chemical substance. "Chemical substance" means a substance intended to be used as a precursor in the manufacture of methamphetamine or any other chemical intended to be used in the manufacture of methamphetamine

[2] First, the defendant knowingly stored any methamphetamine waste products. "Methamphetamine waste products" means substances, chemical or items of any kind used in the manufacture of methamphetamine or any part of the manufacturing process, or the by-products or degradates of manufacturing methamphetamine.

[3] First, the defendant knowingly stored any methamphetamine paraphernalia. "Methamphetamine paraphernalia" means all equipment, products, and materials of any kind that are used, intended for use, or designed for use in manufacturing, injecting, ingesting, inhaling, or otherwise introducing methamphetamine into the human body.

[A] Second, defendant did so in the presence of a (child) (or) (vulnerable adult). [A child is any person under the age of 18 years.] [A "vulnerable adult" is a person who is 18 years of age or older who (is a resident inpatient of a facility) (receives services at or from a facility required to be licensed by the Commissioner of Human Services to serve adults, except that a person who receives outpatient services for treatment of chemical dependency or mental illness or who has been committed as a sexual psychopathic personality or sexually dangerous person is not considered a vulnerable adult unless that person possesses physical or mental infirmity or there is physical or mental emotional dysfunction that impairs the person's ability to provide adequately for his or her own care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment) (receives services from a home care provider licensed by the Commissioner of Human Services or from a person or organization that exclusively offers, provides, or arranges for personal care assistance services) (regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the person's ability to provide adequately for his or her care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment).]

[B] Second, the defendant did so in the residence of a (child) (or) (vulnerable adult). [A child is any person under the age of 18 years.] [A "vulnerable adult" is a person who is 18 years of age or older who (is a resident inpatient of a facility) (receives services at or from a facility required to be licensed by the Commissioner of Human Services to serve adults, except that a person who receives outpatient services for treatment of chemical dependency or mental illness or who has been committed as a sexual psychopathic personality or sexually dangerous person is not considered a vulnerable adult unless that person possesses physical or mental infirmity or there is physical or mental emotional dysfunction that impairs the person's ability to provide adequately for his or her own care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment) (receives services from a home care provider licensed by the Commissioner of Human Services or from a person or organization that exclusively offers, provides, or arranges for personal care assistance services) (regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the person's ability to provide adequately for his or her care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment).]

[C] Second, the defendant did so in a building, structure, conveyance or outdoor location where a (child (or) (vulnerable adult) might reasonably be expected to be present. [A child is any person under the age of 18 years.] [A "vulnerable adult" is a person who is 18 years of age or older who (is a resident inpatient of a facility) (receives services at or from a facility required to be licensed by the Commissioner of Human Services to serve adults, except that a person who receives outpatient services for treatment of chemical dependency or mental illness or who has been committed as a sexual psychopathic personality or sexually dangerous person is not considered a vulnerable adult unless that person possesses physical or mental infirmity or there is physical or mental emotional dysfunction that impairs the person's ability to provide adequately for his or her own care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment) (receives services from a home care provider licensed by the Commissioner of Human Services or from a person or organization that exclusively offers, provides, or arranges for personal care assistance services) (regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the person's ability to provide adequately for his or her care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment).]

[D] Second, the defendant did so in a room offered to the public for overnight accommodation

[E] Second, the defendant did so in a multiple unit residential building

Third, the defendant's act took place (or about) ____ in ____ County.

If you find that each of the elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proved beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 20.69

CONTROLLED SUBSTANCE CRIME—METHAMPHETAMINE MANUFACTURER—EXPOSURE OF CHILDREN OR VULNERABLE ADULTS—DEFINED

Under Minnesota law, whoever knowingly causes or permits a (child) (or) (vulnerable adult) to (inhale) (be exposed to) (have contact with) (or) (ingest) (methamphetamine) (a chemical substance) (methamphetamine paraphernalia) is guilty of a crime.

COMMENT

M.S.A. § 152.137, subd. 2(b).

CRIMJIG 20.70

CONTROLLED SUBSTANCE CRIME—METHAMPHETAMINE MANUFACTURER—EXPOSRE OF CHILDREN OR VULNERABLE ADULTS—ELEMENTS

The elements of exposing a (child) (or) (vulnerable adult) to methamphetamine are:

First, the defendant knowingly (caused) (permitted) a (child) (or) (vulnerable adult) to (inhale) (be exposed to) (have contact with) (ingest) (methamphetamine) (a chemical substance) (methamphetamine paraphernalia). [A child is any person under the age of 18 years.] [A "vulnerable adult" is a person who is 18 years of age or older who (is a resident inpatient of a facility) (receives services at or from a facility required to be licensed by the Commissioner of Human Services to serve adults, except that a person who receives outpatient services for treatment of chemical dependency or mental illness or who has been committed as a sexual psychopathic personality or sexually dangerous person is not considered a vulnerable adult unless that person possesses physical or mental infirmity or there is physical or mental emotional dysfunction that impairs the person's ability to provide adequately for his or her own care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment) (receives services from a home care provider licensed by the Commissioner of Human Services or from a person or organization that exclusively offers, provides, or arranges for personal care assistance services) (regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the person's ability to provide adequately for his or her care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment).] ["Chemical substance" means a substance intended to be used as a precursor in the manufacture of methamphetamine or any other chemical intended to be used in the manufacture of methamphetamine.] ["Methamphetamine paraphernalia" means all equipment, products, and materials of any kind that are used, intended for use, or designed for use in manufacturing, injecting, ingesting, inhaling, or otherwise introducing methamphetamine into the human body.]

Second, the defendant's act took place (or about) ____ in ____ County.

If you find that each of the elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proved beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 20.71

INTENTIONAL DIVERSION OF MEDICAL CANNABIS—DEFINED

Under Minnesota law whoever, as a manufacturer [or an agent of a manufacturer], intentionally transfers medical cannabis to a person other than a patient, a registered designated caregiver, or if listed on the registry verification, a parent or legal guardian of a patient, is guilty of intentional diversion of medical cannabis.

COMMENT

M.S.A. § 152.33, subd. 1.

CRIMJIG 20.72

INTENTIONAL DIVERSION OF MEDICAL CANNABIS—ELEMENTS

The elements of intentional diversion of medical cannabis as alleged in this case are:

First, the defendant is a medical cannabis manufacturer [or an agent of a manufacturer].

> **"Medical cannabis manufacturer" or "manufacturer" means an entity registered by the commissioner to cultivate, acquire, manufacture, possess, prepare, transfer, transport, supply, or dispense medical cannabis, delivery devices, or related supplies and educational materials.**
>
> **[An agent of a manufacturer is "one who is authorized to act for or in place of another; a representative."]**

Second, the defendant intentionally transferred medical cannabis to a person other than a patient, registered designated caregiver or, a parent or guardian, listed on the registry verification, of a patient.

> **"Intentionally" means that the actor either has a purpose to do the thing or cause the result specified or believes that the act performed by the actor, if successful, will cause that result.**
>
> "Medical cannabis" means any species of the genus cannabis plant, or any mixture or preparation of them, including whole plant extracts and resins, and is delivered in the form of: (1) liquid, including, but not limited to, oil; (2) pill; (3) vaporized delivery method with use of liquid or oil but which does not require the use of dried leaves or plant form; or (4) any other method, excluding smoking, approved by the commissioner.
>
> **"Patient" means a Minnesota resident who has been diagnosed with a qualifying medical condition by a health care practitioner and who has otherwise met any other**

requirements for patients to participate in the registry program.

"Registered designated caregiver" means a person who: is at least 21 years old; does not have a conviction for a disqualifying felony offense; has been approved by the commissioner to assist a patient who has been identified by a health care practitioner as developmentally or physically disabled and therefore unable to self-administer medication or acquire medical cannabis from a distribution facility due to the disability; and is authorized by the commissioner to assist the patient with the use of medical cannabis.

"Registry Verification" means the verification provided by the commissioner that a patient is enrolled in the registry program and that includes the patient's name, registry number, and qualifying medical condition and, if applicable, the name of the patient's registered designated caregiver or parent or legal guardian.

Third, the transfer took place on or about ________ in ________ County.

If you find that each of these elements has been proved beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

The definition of "agent" comes from Black's Law Dictionary (9th ed. 2009). See CIVJIG 30.25 if a more expansive definition is desired.

CRIMJIG 20.73

PRESUMPTION OF AUTHORIZED USE OF MEDICAL CANNABIS

The law presumes that a patient enrolled in the registry program is engaged in the authorized use of medical cannabis.

> **"Registry program" means the patient registry established and maintained by the commissioner of health which includes the patient's name, registry number, and qualifying medical condition and, if applicable, the name of the patient's registered designated caregiver or parent or legal guardian.**
>
> **"Authorized use" is any use allowed by statute or the Commissioner of Health, including ________.[1]**
>
> "Medical cannabis" means any species of the genus cannabis plant, or any mixture or preparation of them, including whole plant extracts and resins, and is delivered in the form of: (1) liquid, including, but not limited to, oil; (2) pill; (3) vaporized delivery method with use of liquid or oil but which does not require the use of dried leaves or plant form; or (4) any other method, excluding smoking, approved by the commissioner.

This presumption can be rebutted by evidence that the defendant's conduct related to use of medical cannabis was not for the purpose of treating or alleviating the patient's qualifying medical condition or symptoms associated with the patient's qualifying medical condition.

COMMENT

M.S.A. § 152.33, subd. 1.

20.73

[1] M.S.A. § 152.22, subd. 14, for the list of qualifying medical conditions. See M.S.A. 152.23 for limitations on the administration of medical cannabis.

CRIMJIG 20.74

IMPORTING CONTROLLED SUBSTANCES ACROSS STATE BORDERS—DEFINED

Under Minnesota law, whoever crosses a state or international border into Minnesota while knowingly in possession of

[1] one or more mixtures of a total weight of twenty-five grams or more containing (cocaine)(heroin)(methamphetamine),

[2] one or more mixtures of a total weight of five hundred grams or more containing ____,[1]

[3] one or more mixtures of (a total weight of five hundred grams or more)(five hundred or more dosage units of)________,[2]

[4] one or more mixtures of a total weight of one hundred kilograms or more containing marijuana or tetrahydrocannabinols,

is guilty of crime of importing controlled substances across state borders.

COMMENT

M.S.A. § 152.0261, subd. 1.

20.74

[1] The narcotic charged in the complaint.

[2] The amphetamine, phencyclidine, or hallucinogen charged in the complaint.

CRIMJIG 20.75

IMPORTING CONTROLLED SUBSTANCES ACROSS STATE BORDERS—ELEMENTS

The elements of importing controlled substances across state borders as alleged in this care are:

First, the defendant knowingly possessed

[1] one or more mixtures of a total weight of twenty five grams or more containing (cocaine)(heroin)(methamphetamine).

[2] one or more mixtures of a total weight of five hundred grams or more of ________.[1]

[3] one or more mixtures of (a total weight of five hundred grams or more)(five hundred or more dosage units) of ________.[2]

[4] one or more mixtures of a total weight of one hundred kilograms or more containing marijuana or tetrahydrocannibinols.

A "mixture is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

[The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the controlled substance) at a given time. A person is in constructive possession of ________ (the controlled substance) if ________ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control

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20.75

[1] The narcotic charged in the complaint.

[2] The amphetamine, phencyclidine, or hallucinogen charged in the complaint

over ________ (the controlled substance). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of ________ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (the controlled substance), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the substance possessed was ____ (a controlled substance).[3]

Third, the defendant crossed a state or international border into Minnesota while in possession of ____.

Fourth, the defendant brought the controlled substance into or through ________ County on (or about) ________.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

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[3] The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

CRIMJIG 20.76

IMPORTING CONTROLLED SUBSTANCES ACROSS STATE BORDERS—USE OF PERSON UNDER 18—DEFINED

Under Minnesota law, whoever conspires with or employs a person under the age of 18 to cross a state or international border into Minnesota while that person or the person under the age of 18 is in possession of

[1] (insert first degree controlled substance(s))

[2] (insert second degree controlled substance(s))

[3] (insert third degree controlled substance(s))

[4] (insert fourth degree controlled substance(s))

[5] (insert fifth degree controlled substance(s))

[6] (insert substance with intent to manufacture methamphetamine)

with intent to obstruct the criminal justice process, is guilty of the crime of importing controlled substances across state borders by use of a person under 18.

COMMENT

M.S.A. § 152.0261, subd. 2.

CRIMJIG 20.77

IMPORTING CONTROLLED SUBSTANCES ACROSS STATE BORDERS—USE OF PERSON UNDER 18—ELEMENTS

The elements of importing controlled substances across state borders by use of a person under 18 are:

First, the defendant (conspired with ________(another person)) (employed ________(another person)) to cross a state or international border.

A person conspires with another to commit a crime when the person agrees to commit the crime, and the person or another party to the conspiracy does an overt act for the purpose of furthering the conspiracy.[1]

Second, ________ (the other person) was under the age of eighteen.

Third, ________ (the other person) or the defendant was in possession of

[1] (insert first degree controlled substance(s))

[2] (insert second degree controlled substance(s))

[3] (insert third degree controlled substance(s))

[4] (insert fourth degree controlled substance(s))

[5] (insert fifth degree controlled substance(s))

[6] (insert substance with intent to manufacture methamphetamine)

Fourth, the defendant intended to obstruct the criminal justice process.

20.77

[1] The court may wish to instruct further on conspiracy, using CRIMJIGs 5.06 to 5.16.

Fifth, the defendant (or other person) brought the controlled substance into or through ________ County on (or about) ________.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

D. CRIMES AGAINST THE GOVERNMENT AND THE ADMINISTRATION OF JUSTICE

CHAPTER 21

BRIBERY AND TAMPERING

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CRIMJIG 21.01

BRIBERY—PUBLIC OFFICER OR EMPLOYEE—OFFERING OR GIVING—DEFINED

Under Minnesota law, whoever offers, gives, or promises to give, directly or indirectly, any benefit, reward, or consideration to any public officer or employee to which the person is not legally entitled, with the intent to influence such officer or employee with respect to the performance of powers or duties of such officer, is guilty of a crime.

COMMENT

M.S.A. § 609.42, subd. 1(1).

See M.S.A. § 609.415 for the definition of a public officer or employee.

CRIMJIG 21.02

BRIBERY—PUBLIC OFFICER OR EMPLOYEE—OFFERING OR GIVING—ELEMENTS

The elements of bribery are:

First, the defendant offered, gave, or promised to give ________ to ________.

Second, ________ was a public (officer) (employee).[1] [A ________ is a public (officer) (employee).]

Third, ________ had no legal right to the ________.

Fourth, the defendant made the offer, gift, or promise with the intent of influencing ________ in ________'s capacity as ________.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.42, subd. 1(1).

21.02

[1] *See* M.S.A. § 609.415 for the definition of a public officer or employee

CRIMJIG 21.03

BRIBERY—PUBLIC OFFICER OR EMPLOYEE—RECEIVING—DEFINED

Under Minnesota law, any public officer or employee who requests, receives, or agrees to receive, directly or indirectly, any benefit, reward, or consideration to which the person is not legally entitled, on the understanding that the person will be influenced in the performance of the person's powers or duties, is guilty of a crime.

COMMENT

M.S.A. § 609.42, subd. 1(2).

See M.S.A. § 609.415 for the definition of a public officer or employee.

CRIMJIG 21.04

BRIBERY—PUBLIC OFFICER OF EMPLOYEE—RECEIVING—ELEMENTS

The elements of bribery are:

First, the defendant was a public (officer) (employee).[1] A ________ is a public (officer) (employee).

Second, the defendant requested, received, or agreed to receive ________ (or) (a benefit) (a reward) (a consideration).

Third, the defendant had no legal right to the ________ (or) (benefit) (reward) (consideration).

Fourth, the defendant agreed and ________ understood, that by reason of the ________, if (paid) (given), the defendant would be influenced in the capacity of ________.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.42, subd. 1(2).

See M.S.A. § 609.415 for the definition of public officer or employee.

See also State v. Gardiner, 88 Minn. 130, 92 N.W. 529 (1902).

21.04

[1] *See* M.S.A. § 609.415 for the definition of a public officer or employee.

CRIMJIG 21.05

BRIBERY—WITNESS—GIVING—DEFINED

Under Minnesota law, whoever offers, gives, or promises to give, directly or indirectly, any benefit, reward, or consideration, to a person who is a witness or is about to become a witness in a proceeding before a (judicial) (hearing) officer, with the intent that the testimony will be affected or that the person will not appear at the proceeding, is guilty of a crime.

COMMENT

M.S.A. § 609.42, subd. 1(3).

"A 'hearing officer' includes any person authorized by law or private agreement to hear and determine a cause or controversy and who is not a judicial officer." M.S.A. § 609.415, subd. 1(4).

CRIMJIG 21.06

BRIBERY—WITNESS—GIVING—ELEMENTS

The elements of bribery are:

First, ________ was a witness or was about to become a witness in a proceeding before ________, a (judicial) (hearing) officer.

Second, the defendant offered, gave, or promised to give ________ to ________.

Third, the defendant made the offer, gift, or promise with the intent that ________ (would be influenced in (his) (her) testimony) (or) (that ________ would not appear) at the proceeding.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.42, subd. 1(3).

CRIMJIG 21.07

BRIBERY—WITNESS—RECEIVING—DEFINED

Under Minnesota law, whoever is a witness or is about to become a witness in a proceeding before a (judicial) (hearing) officer, and requests, receives, or agrees to receive, directly or indirectly, any benefit, reward, or consideration, upon the understanding that the testimony will be influenced or that the person will not appear at the proceeding, is guilty of a crime.

COMMENT

M.S.A. § 609.42, subd. 1(4).

CRIMJIG 21.08

BRIBERY—WITNESS—RECEIVING—ELEMENTS

The elements of bribery are:

First, the defendant was a witness or was about to become a witness in a proceeding before ________, a (judicial) (hearing) officer.

Second, the defendant requested, received, or agreed to receive ________ (or) (a benefit) (reward) (consideration) from ________.

Third, the defendant intended that ________ understand that by reason of the ________, the defendant (would be influenced in (his) (her) testimony) (or) (would not appear) at the proceeding.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.42, subd. 1(4).

The use of the word "understanding" in the statute seems to require that the person offered the bribe know what the defendant intends by his offer.

CRIMJIG 21.09

BRIBERY—CONCEALMENT OF CRIME—DEFINED

Under Minnesota law, whoever accepts, directly or indirectly, a benefit, reward, or consideration upon an agreement (express or implied) that the person will refrain from giving information that may lead to prosecution for a crime or purported crime, or that the person will abstain from, discontinue, or delay such prosecution, is guilty of a crime.

COMMENT

M.S.A. § 609.42, subd. 1(5).

CRIMJIG 21.10

BRIBERY—CONCEALMENT OF CRIME—ELEMENTS

The elements of bribery are:

First, the defendant was in a position to

[1] give information that might lead to the prosecution of ________ for the crime or purported crime of ________.

[2] abstain from, discontinue, or delay the prosecution of ________ for the crime or purported crime of ________.

It does not matter whether such prosecution would have been successful.

Second, the defendant accepted ________ from ________.

Third, the defendant and ________ agreed or understood that by reason of the defendant's accepting the ________, the defendant would

[A] refrain from giving information that might lead to the prosecution of ________ for the crime or purported crime of ________.

[B] abstain from, discontinue, or delay the prosecution of ________ for the crime or purported crime of ________.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.42, subd. 1(5).

The statute provides that no crime is committed if the compromise is allowed by law. In a case where the defendant has asserted such a defense, an additional element should be inserted to the effect that "The compromise was not allowed by law." The defendant may be required to introduce some evidence on the issue before the State is required to offer proof on it, but the burden of proof on the issue rests with the State. *Mullaney v. Wilbur*, 421 U.S. 684, 95 S. Ct. 1881, 44 L.Ed.2d 508 (1975).

CRIMJIG 21.11

TAMPERING WITH A WITNESS—FIRST DEGREE—DEFINED

Under Minnesota law, whoever intentionally

[1] prevents or dissuades, or attempts to prevent or dissuade by means of force or threats of injury to any person or property, a person who is or may become a witness from attending or testifying at any trial, proceeding, or inquiry authorized by law,

[2] by means of force or threats of injury to any person or property, coerces or attempts to coerce a person who is or may become a witness to testify falsely at any trial, proceeding, or inquiry authorized by law,

is guilty of a crime.

COMMENT

M.S.A. § 609.498, subd. 1(a) and (b).

CRIMJIG 21.12

TAMPERING WITH A WITNESS—FIRST DEGREE—ELEMENTS

The elements of tampering with a witness are:

First, ________ was a (potential) witness in ________:[1]

[1] Second, the defendant intentionally prevented or dissuaded or attempted to prevent or dissuade ________ from (attending) (testifying at) the ________.[1] (It does not matter if the attempt failed.)

[2] Second, the defendant intentionally coerced or attempted to coerce ________ to testify falsely at the ________.[1]

[Insert CRIMJIGs 5.01 and 5.02 on Attempt if appropriate.]

Third, the defendant (tried to accomplish) (accomplished) this by force or by threats of injury to any person or property.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

21.12

[1] The nature of the proceeding, whether a trial or otherwise, should be stated as it appears in the indictment or complaint.

CRIMJIG 21.13

TAMPERING WITH A WITNESS—FIRST DEGREE—RETALIATION—DEFINED

Under Minnesota law, whoever intentionally causes injury or threatens to cause injury to any person or property in retaliation against a person who was summoned as a witness at any trial, proceeding, or inquiry authorized by law within a year following that trial, proceeding, or inquiry, or within a year following the defendant's release from incarceration, whichever is later, is guilty of a crime.

COMMENT

M.S.A. § 609.498, subd. 1(c).

CRIMJIG 21.14

TAMPERING WITH A WITNESS—FIRST DEGREE—RETALIATION—ELEMENTS

The elements of tampering with a witness are:

First, ________ was a witness in ________.[1]

Second, the defendant intentionally caused injury or threatened to cause injury to ________ (any person or property).

Third, the defendant's act was in retaliation against ________ because ________ had been summoned as a witness in ________.[2]

Fourth, the defendant's act took place within a year following that ________,[3] or within a year following the defendant's release from incarceration, whichever was later.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

21.14

[1] The nature of the proceeding, whether a trial or otherwise, should be stated as it appears in the indictment or complaint.

[2] The nature of the proceeding, whether a trial or otherwise, should be stated as it appears in the indictment or complaint.

[3] The nature of the proceeding, whether a trial or otherwise, should be stated as it appears in the indictment or complaint.

CRIMJIG 21.15

TAMPERING WITH A WITNESS—FIRST DEGREE—LAW ENFORCEMENT INFORMATION—DEFINED

Under Minnesota law, whoever intentionally

[1] prevents or dissuades, or attempts to prevent or dissuade, by means of force or threats of injury to any person or property, a person from providing information to law enforcement authorities concerning a crime,

[2] by means of force or threats of injury to any person or property, coerces or attempts to coerce a person to provide false information concerning a crime to law enforcement authorities,

is guilty of a crime.

COMMENT

M.S.A. § 609.498, subd. 1(d) and (e).

CRIMJIG 21.16

TAMPERING WITH A WITNESS—FIRST DEGREE—LAW ENFORCEMENT INFORMATION—ELEMENTS

The elements of tampering with a witness are:

[1] First, the defendant intentionally prevented or dissuaded, or attempted to prevent or dissuade, ________ from providing information to law enforcement authorities concerning a crime. (It does not matter if the attempt failed.)

[2] First, the defendant intentionally coerced or attempted to coerce ________ to provide false information concerning a crime to (________) (a law enforcement authority).

[Insert CRIMJIGs 5.01 and 5.01 on Attempt if appropriate.]

Second, the defendant tried to accomplish this by force or by threats of injury to any person or property.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 21.17

TAMPERING WITH A WITNESS—FIRST DEGREE—RETALIATION—LAW ENFORCEMENT INFORMATION—DEFINED

Under Minnesota law, whoever intentionally causes injury or threatens to cause injury to any person or property in retaliation against a person who has provided information to law enforcement authorities concerning a crime within a year of that person providing the information, or within a year of the defendant's release from incarceration, whichever is later, is guilty of a crime.

COMMENT

M.S.A. § 609.498, subd. 1(f)

CRIMJIG 21.18

TAMPERING WITH A WITNESS—FIRST DEGREE—RETALIATION—LAW ENFORCEMENT INFORMATION—ELEMENTS

The elements of tampering with a witness are:

First, the defendant intentionally caused injury or threatened to cause injury to any person or property.

Second, the defendant's act was in retaliation against ________ because ________ had provided information to law enforcement authorities concerning a crime.

Third, the defendant's act took place within a year from the date that ________ provided the information, or within a year following the defendant's release from incarceration, whichever was later.

Fourth, defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, defendant is not guilty.

CRIMJIG 21.19

TAMPERING WITH A WITNESS—AGGRAVATED FIRST DEGREE—WITNESS—DEFINED

Under Minnesota law, whoever causes, or by means of an implicit or explicit credible threat, threatens to cause great bodily harm or death to another while intentionally

[1] preventing or dissuading, or attempting to prevent or dissuade, a person who is or may become a witness from attending or testifying at any criminal trial or proceeding,

[2] coercing or attempting to coerce a person who is or may become a witness to testify falsely at any criminal trial or proceeding,

is guilty of a crime.

COMMENT

M.S.A. § 609.498, subd. 1b(a)(1) and (2).

CRIMJIG 21.20

TAMPERING WITH A WITNESS—AGGRAVATED FIRST DEGREE—WITNESS—ELEMENTS

The elements of tampering with a witness are:

First, ________ was a (potential) witness in ________.[1]

[1] Second, the defendant intentionally prevented or dissuaded, or attempted to prevent or dissuade ________ from (attending) (testifying at) the ________.[2] (It does not matter if the attempt failed.)

[2] Second, the defendant intentionally coerced or attempted to coerce ________ to testify falsely at the ________.[3]

[Insert CRIMJIGs 5.01 and 5.02 on Attempt if appropriate.]

Third, the defendant (caused great bodily harm or death to another) (by means of an implicit or explicit credible threat, threatened to cause death or bodily harm to another) in the course of tampering with the witness. "Great bodily harm" means bodily harm that creates a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any part of the body, or other serious bodily harm. It is not necessary that the State prove the defendant intended to inflict great bodily harm, but only that the defendant intended to commit the assault.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find

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21.20

[1] The nature of the criminal trial or proceeding alleged in the indictment or complaint.

[2] The nature of the criminal trial or proceeding alleged in the indictment or complaint.

[3] The nature of the criminal trial or proceeding alleged in the indictment or complaint.

that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 21.21

TAMPERING WITH A WITNESS—AGGRAVATED FIRST DEGREE—RETALIATION—DEFINED

Under Minnesota law, whoever causes, or by means of an implicit or explicit credible threat, threatens to cause great bodily harm or death to another while intentionally retaliating against a person who was summoned as a witness at any criminal trial or proceeding within a year following that trial or proceeding, or within a year following the defendant's release from incarceration, whichever is later, is guilty of a crime.

COMMENT

M.S.A. § 609.498, subd. 1b(a)(3).

CRIMJIG 21.22

TAMPERING WITH A WITNESS—AGGRAVATED FIRST DEGREE—RETALIATION—ELEMENTS

The elements of tampering with a witness are:

First, ________ was summoned as a witness in ________.[1]

Second, the defendant caused, or by means of an implicit or explicit credible threat, threatened to cause, death or great bodily harm to another. "Great bodily harm" means bodily harm that creates a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any part of the body, or other serious bodily harm. It is not necessary that the State prove the defendant intended to inflict great bodily harm, but only that the defendant intended to commit the assault.

Third, the defendant's act was in retaliation because ________ had been summoned as a witness in ________.[2]

Fourth, the defendant's act took place within a year following that ________,[3] or within a year following the defendant's release from incarceration, whichever was later.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, defendant is not guilty.

21.22

[1] The nature of the proceeding as it appears in the indictment or complaint.

[2] The nature of the proceeding as it appears in the indictment or complaint.

[3] The nature of the proceeding as it appears in the indictment or complaint.

CRIMJIG 21.23

TAMPERING WITH A WITNESS—AGGRAVATED FIRST DEGREE—LAW ENFORCEMENT INFORMATION—DEFINED

Under Minnesota law, whoever causes or, by means of an implicit or explicit credible threat, threatens to cause great bodily harm or death to another while intentionally

> [1] preventing or dissuading, or attempting to prevent or dissuade, a person from providing information to law enforcement authorities concerning a crime,
>
> [2] coercing or attempting to coerce a person to provide false information concerning a crime to law enforcement authorities,

is guilty of a crime.

COMMENT

M.S.A. § 609.498, subd. 1b(a)(4) and (5).

CRIMJIG 21.24

TAMPERING WITH A WITNESS—AGGRAVATED FIRST DEGREE—LAW ENFORCEMENT INFORMATION—ELEMENTS

The elements of tampering with a witness are:

[1] First, the defendant intentionally prevented or dissuaded, or attempted to prevent or dissuade, ________ from providing information to law enforcement authorities concerning a crime. (It does not matter if the attempt failed.)

[2] First, the defendant intentionally coerced or attempted to coerce ________ to provide false information concerning a crime to (________) (a law enforcement authority).

[Insert CRIMJIGs 5.01 and 5.02 on Attempt if appropriate.]

Second, the defendant caused or, by means of an implicit or explicit credible threat, threatened to cause, death or great bodily harm to another. "Great bodily harm" means bodily harm that creates a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any part of the body, or other serious bodily harm. It is not necessary that the State prove the defendant intended to inflict great bodily harm, but only that the defendant intended to commit the assault.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, defendant is not guilty.

CRIMJIG 21.25

TAMPERING WITH A WITNESS—AGGRAVATED FIRST DEGREE—LAW ENFORCEMENT INFORMATION—RETALIATION—DEFINED

Under Minnesota law, whoever causes or, by means of an implicit or explicit credible threat, threatens to cause great bodily harm or death to another while intentionally retaliating against a person who has provided information to law enforcement authorities concerning a crime within a year of that person providing the information, or within a year of the defendant's release from incarceration, whichever is later, is guilty of a crime.

COMMENT

M.S.A. § 609.498, subd. 1b(a)(6).

CRIMJIG 21.26

TAMPERING WITH A WITNESS—AGGRAVATED FIRST DEGREE—LAW ENFORCEMENT INFORMATION—RETALIATION—ELEMENTS

The elements of tampering with a witness are:

First, the defendant caused death or great bodily harm to another or, by means of an implicit or explicit credible threat, threatened to cause death or great bodily harm to another. "Great bodily harm" means bodily harm that creates a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any part of the body, or other serious bodily harm. It is not necessary that the State prove the defendant intended to inflict great bodily harm, but only that the defendant intended to commit the assault.

Second, the defendant's act was intended as retaliation against ________ because ________ had provided information to law enforcement authorities concerning a crime.

Third, the defendant's act took place within a year from the date that ________ provided the information, or within a year following the defendant's release from incarceration, whichever was later.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, defendant is not guilty.

CRIMJIG 21.27

TAMPERING WITH A WITNESS—SECOND DEGREE—DEFINED

Under Minnesota law, whoever,

[1] by threatening to unlawfully injure another's (trade) (business) (profession) (calling),

[2] by threatening to expose a secret or deformity that would expose another person to disgrace and ridicule,

[3] by threatening to make a defamatory statement that would expose another person to disgrace or ridicule,

[4] by threatening to make (or cause to be made) a criminal charge, whether true or false,

[A] intentionally prevents or dissuades a person who is or may become a witness from attending or testifying at a trial, proceeding, or inquiry authorized by law,

[B] intentionally coerces or attempts to coerce a person who is or may become a witness to testify falsely at any trial, proceeding, or inquiry authorized by law,

[C] intentionally prevents or dissuades a person from providing information to law enforcement authorities concerning a crime,

[D] intentionally coerces or attempts to coerce a person to provide false information concerning a crime to law enforcement authorities,

is guilty of a crime.

COMMENT

M.S.A. § 609.498, subd. 2.

CRIMJIG 21.28

TAMPERING WITH A WITNESS—SECOND DEGREE—ELEMENTS

The elements of tampering with a witness are:

[1] First, ________ was a (potential) witness in ________.[1]

[A] Second, the defendant intentionally prevented or dissuaded, or attempted to prevent or dissuade, ________ from (attending) (testifying at) the ________. (It does not matter if the attempt failed.)

[B] Second, the defendant intentionally coerced or attempted to coerce ________ to testify falsely at any trial, proceeding, or inquiry authorized by law.

[2] First, ________ had information concerning a crime.

[A] Second, the defendant intentionally prevented or dissuaded, or attempted to prevent or dissuade, ________ from providing information to law enforcement authorities concerning a crime.

[B] Second, the defendant intentionally coerced or attempted to coerce ________ to provide false information concerning a crime to (________) (a law enforcement authority).

Third, the defendant tried to accomplish this by

[1] threatening to unlawfully injure ________'s (trade) (business) (profession) (calling).

[2] threatening to expose a secret or deformity of ________, if to do so would expose ________ to disgrace or ridicule.

21.28

[1] The nature of the proceeding, whether a trial or otherwise, should be stated as it appears in the indictment or complaint.

[3] threatening to (publish) (communicate) to (________) (another person) a defamatory statement about ________, if to do so would expose ________ to disgrace or ridicule. A "defamatory statement" is an untrue statement about a person that would injure that person's name or reputation.

[4] threatening to expose any person to disgrace or ridicule.

[5] threatening to make (or cause to be made) a criminal charge of ________ against ________. (It does not matter whether the charge was true or false.)

[Insert CRIMJIGs 5.01 and 5.02 on Attempt if appropriate.]

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. §§ 609.498, subd. 2; 609.27, subd. 1(3), (4), (5).

The Committee has substituted "communicate" for the word "publish" used in M.S.A. § 609.27, subd. 1(4). The Committee was concerned that a jury may have a narrow notion of what "publish" means, while the term "communicate" adequately conveys the legal meaning of the term.

CRIMJIG 21.29

INTERFERENCE WITH AN EMERGENCY CALL—DEFINED

The statutes of Minnesota provide that whoever intentionally

[1] interrupts, disrupts, impedes, or interferes with an emergency call and an emergency exits

[2] prevents or hinders another from placing an emergency call and an emergency exists

is guilty of a crime.

COMMENT

M.S.A. § 609.78, subd. 2.

CRIMJIG 21.30

INTERFERENCE WITH AN EMERGENCY CALL—ELEMENTS

The elements of interference with an emergency call are:

[1] First, the defendant interrupted, disrupted, impeded, or interfered with an emergency call.

Second, the defendant acted with the intent to interrupt, disrupt, impede, or interfere with an emergency call.

Third, an emergency existed.

[2] First, the defendant prevented or hindered another from placing an emergency call.

Second, the defendant acted with the intent to prevent or hinder another from placing an emergency call.

Third, an emergency existed.

"Emergency call" means (1) a 911 call; (2) any call for emergency medical or ambulance service; or (3) any call for assistance from a police or fire department or for other assistance needed in an emergency to avoid serious harm to person or property.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.78, subd. 2.

For the definition of emergency call, see M.S.A. § 609.78, subd. 3.

CRIMJIG 21.31

FALSE EMERGENCY POLICE, FIRE, OR AMBULANCE CALL—DEFINED

Under Minnesota law, whoever makes a call for emergency police, fire, medical or ambulance service, knowing that no police, fire, medical, or medical emergency exists is guilty of a crime.

COMMENT

M.S.A. § 609.78, subd. 1(4)

CRIMJIG 21.32

FALSE EMERGENCY CALL—ELEMENTS

The elements of a false emergency call are:

First, the defendant made a call for emergency (police) (fire) (medical) (ambulance) service. An "emergency call" means: (1) a 911 call; (2) any call for emergency medical or ambulance service; or (3) any call for assistance from a police or fire department or for other assistance needed to avoid serious harm to a person or property.

Second, the defendant knew that no (police) (fire) (medical) emergency existed.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 21.33

FALSE EMERGENCY CALL—INTENT TO DISRUPT, INTERFERE OR REDUCE RESPONSE—DEFINED

Under Minnesota law, whoever makes or initiates an emergency call, knowing that no emergency exists, and, with the intent to disrupt, interfere with, or reduce the provision of emergency services or the emergency call center's resources, remains silent, or makes abusive or harassing statement to the call recipient is guilty of a crime.

COMMENT

M.S.A. § 609.78, subd. 1(6) (misdemeanor); subd. 2(3) (gross misdemeanor); and subd. 2b(1) (felony).

CRIMJIG 21.34

FALSE EMERGENCY CALL—INTENT TO DISRUPT, INTERFERE OR REDUCE RESPONSE—ELEMENTS

The elements of making a false emergency call with intent to disrupt, interfere, or reduce response are:

First, the defendant made or initiated an emergency call.

Second, the defendant knew that no emergency existed.

Third, the defendant (remained silent) (or) (made abusive or harassing statement to the call recipient).

Fourth, the defendant made the call with the intent (to disrupt, interfere with, or reduce the provision of emergency services) (or) (to disrupt, interfere with, or reduce the emergency call center's resources).

"Call" includes the use of any method of communication including, but not limited to: telephones, facsimiles, Voice over Internet Protocols, e-mail messages, text messages and electronic transmissions of an image or video.

"Emergency call" means: (1) a 911 call; (2) any call for emergency medical or ambulance service; or (3) any call for assistance from a police or fire department or for other assistance needed in an emergency to avoid serious harm to person or property.

[Fifth, defendant been previously convicted or adjudicated delinquent for a violation of this statute.[1]]

21.34

[1] Note that the defendant can stipulate to the prior conviction and remove this element from the jury's consideration. *See State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

[Fifth, the defendant been previously convicted or adjudicated delinquent on more than one occasion for a violation of this statute.[2]]

[Fifth] [Sixth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant guilty you will have (an) additional question(s) to answer: Has the? Has? You will answer the question(s) "yes" or "no." If you have a reasonable doubt as to the answer to a question, you must answer the question "no."

COMMENT

M.S.A. § 609.78, subd. 1(6) (misdemeanor); subd. 2(3) (gross misdemeanor); and subd. 2b(1) (felony).

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[2] Note that the defendant can stipulate to the prior conviction and remove this element from the jury's consideration. *See State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

CRIMJIG 21.35

FALSE EMERGENCY CALL—INTENT TO PROMPT A RESPONSE—DEFINED

Under Minnesota law, whoever places an emergency call and reports a fictitious emergency with the intent of prompting an emergency response by law enforcement, fire, or emergency medical personnel (and the call triggers an emergency response and, as a result of the response, someone suffers (great bodily harm)) is guilty of a crime.

COMMENT

M.S.A. § 609.78, subd. 2(2) and 2a.

CRIMJIG 21.36

FALSE EMERGENCY CALL—INTENT TO PROMPT AN EMERGENCY RESPONSE—ELEMENTS

The elements of making a false emergency call with intent to prompt an emergency response are:

First, the defendant placed an emergency call.

Second, the defendant reported a fictitious emergency.

Third, the defendant made the call with the intent of prompting an emergency response by law enforcement, fire or emergency medical services personnel.

[Fourth, the call triggered an emergency response.

Fifth, as a result of the response ________ (someone) suffered (great bodily harm) (or) (death). "Great bodily harm" means bodily injury which creates a high probability of death or which causes a serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.]

"Call" includes the use of any method of communication including, but not limited to: telephones, facsimiles, Voice over Internet Protocols, e-mail messages, text messages and electronic transmissions of an image or video.

"Emergency call" means: (1) a 911 call; (2) any call for emergency medical or ambulance service; or (3) any call for assistance from a police or fire department or for other assistance needed in an emergency to avoid serious harm to person or property.

[Fourth] [Sixth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable

doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.78, subd. 2(2) and 2a

CHAPTER 22

PERJURY

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CRIMJIG 22.01

PERJURY—ACTION, HEARING, OR PROCEEDING—DEFINED

Under Minnesota law, whoever makes a false, material statement that the person does not believe to be true (in) (for) (an action) (a hearing) (a proceeding) of any kind in which the statement is (required) (authorized) by law to be made under (oath) (affirmation) is guilty of a crime.

COMMENT

M.S.A. § 609.48, subd. 1(1).

CRIMJIG 22.02

PERJURY—ACTION, HEARING, OR PROCEEDING—ELEMENTS

The elements of perjury are:

First, the defendant made the alleged statement(s) under oath (or affirmation) in ________. This (action) (hearing) (proceeding) was one in which the statement was (required) (authorized) to be made under oath or affirmation. (An "affirmation" is a solemn statement made as a substitute for a sworn statement by a person whose conscience will not permit the person to take an oath.)

Second, the statement was false

Third, the statement was material. A statement is material if knowledge of the (fact(s)) (item) would affect a person's decision-making.

Fourth, the defendant did not believe the statement(s) to be true. [If you find the defendant made two statements under oath that are inconsistent, and you find the defendant could not have believed each of the statements, when made, to be true, you may find the defendant intentionally made a false statement. It is not necessary for you to decide which statement was false.][1]

Fifth, the defendant knew that (he) (she) was under (oath) (affirmation).

Sixth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

22.02

[1] Use the bracketed language when the case involves two inconsistent statements or affirmations.

COMMENT

M.S.A. § 609.48, subd. 1(1).

In *United States v. Gaudin*, 515 U.S. 506, 510, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995), the U.S. Supreme Court held that it was error to instruct the jury that statements were material as a matter of law when materiality was a fact question for the jury.

In *State v. Mertz*, 801 N.W.2d 219 (Minn. App. 2011), the Court of Appeals held that the perjury statute requires that defendant must be given a properly administered formal oath by a court-designated individual. However, the requirements of a formal oath for documents filed with the court have been addressed by the legislature in amendments to M.S.A. §§ 358.116 and 609.48, subd. 1, providing that, unless specifically required by rule, documents filed with a court of the Minnesota judicial branch are not required to be notarized, but are verified "upon oath or affirmation" without administration of an oath provided that immediately following the document is a statement that substantially declares "I declare under penalty of perjury that everything I have stated in this document is true and correct."

In *State v. Olson*, 478 N.W.2d 218 (Minn. App. 1991), the Court of Appeals considered application of the doctrine of collateral estoppel to a perjury prosecution. The court held that collateral estoppel bars a perjury prosecution against a defendant for alibi testimony that the defendant gave in his own defense and the trial judge cited as the reason for the acquittal. The court further held that the acquittal of an alleged accomplice does not bar a perjury prosecution against a person who, although potentially chargeable with the crime, is only a witness in the trial that led to the acquittal.

CRIMJIG 22.03

PERJURY—WRITING UNDER OATH—DEFINED

Under Minnesota law, whoever, in any writing that is (required) (authorized) by law to be made under (oath) (affirmation), makes a false, material statement that the person does not believe to be the true is guilty of a crime.

COMMENT

M.S.A. § 609.48, subd. 1(2).

In *State v. Healy*, 521 N.W.2d 47 (Minn. App. 1994), the Court of Appeals held that the oath administered to a jury pool before the distribution of a jury questionnaire was authorized by law, and, therefore, the defendant could be prosecuted for making false statements in answering the jury questionnaire.

CRIMJIG 22.04

PERJURY—WRITING UNDER OATH—ELEMENTS

The elements of perjury are:

First, the defendant made the alleged statement(s) under oath (or affirmation) in ________. This writing was one in which the statement was (required) (authorized) to be made under oath or affirmation. (An "affirmation" is a solemn statement made as a substitute for a sworn statement by a person whose conscience will not permit the person to take an oath.)

Second, the statement(s) (was) (were) false and material. It is for you to decide whether or not the statement(s) (was) (were) false. You are instructed, as a matter of law, that if the statement(s) (was) (were) made, (it was) (they were) material.

Third, the defendant did not believe the statement(s) to be true. [If you find the defendant made two (statements under oath) (affirmations) that are inconsistent, and you find the defendant could not have believed each of the (statements) (affirmations), when made, to be true, you may find the defendant intentionally made a false statement. It is not necessary for you to decide which statement was false.][1]

Fourth, the defendant knew that (he) (she) was under (oath) (affirmation).

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

22.04

[1] Use the bracketed language when the case involves two inconsistent statements or affirmations

CRIMJIG 22.05

PERJURY—OTHER INSTANCES—DEFINED

Under Minnesota law, whoever makes a false material statement that the person does not believe to be true in ________,[1] is guilty of a crime.

COMMENT

M.S.A. § 609.48, subd. 1(3); M.S.A. § 358.115 (unsworn foreign declarations); M.S.A. § 358.116 (court documents)

22.05

[1] The specific nature of the circumstances in which the defendant's statement was made, as alleged in the indictment or complaint, should be set forth, but no reference need be made to the fact that the statement was made under "the penalties for perjury."

CRIMJIG 22.06

PERJURY—OTHER INSTANCES—ELEMENTS

The elements of perjury are:

First, the defendant made the alleged statement(s) in ________.

Second, the statement(s) (was) (were) false.

Third, the statements were material. A statement is material if knowledge of the (fact(s)) (item) would affect a person's decision-making.

Fourth, the defendant did not believe the statement(s) to be true.

Fifth, the defendant knew that (he) (she) was making the statement under the penalty of perjury.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.48, subd. 1(3).

In *United States v. Gaudin*, 515 U.S. 506, 510, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995), the U.S. Supreme Court held that it was error to instruct the jury that statements were material as a matter of law when materiality was a fact question for the jury.

CRIMJIG 22.07

DEFECTIVE OATH

If the alleged statement(s) (was) (were) made under oath, it does not matter if the oath was taken or administered in an irregular manner.

COMMENT

M.S.A. § 609.48, subd. 2(1).

CRIMJIG 22.08

ALL CHARGES NEED NOT BE PROVEN

It has been alleged that the defendant made more than one false statement. In order to find the defendant guilty, you must find beyond a reasonable doubt that the defendant made at least one false statement, and you must all agree on which statement was false. It is not necessary that you find that more than one false statement was made.

CRIMJIG 22.09

FALSE TAX STATEMENT—DEFINED

Under Minnesota law, whoever, in making any statement, written or oral, that is required or authorized by law to be made as a basis for (imposing) (reducing) (abating) any tax or assessment, intentionally makes any statement as to a material matter that the person knows is false, is guilty of a crime.

COMMENT

M.S.A. § 609.41.

CRIMJIG 22.10

FALSE TAX STATEMENT—ELEMENTS

The elements of making a false tax statement are:

First, the defendant (made) (filed) a statement (to) (with) ________ for the purpose of providing a basis for (imposing) (reducing) (abating) ________. (The statement may have been either in writing or oral.)

Second, the defendant intentionally stated that ________.

Third, the statement was material. A statement is material if knowledge of the (fact(s)) (item) would affect a person's decision-making.

Fourth, the defendant knew the statement was false. To know that the statement was false requires only that the defendant believed that it was false.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.41.

In *United States v. Gaudin*, 515 U.S. 506, 510, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995), the U.S. Supreme Court held that it was error to instruct the jury that statements were material as a matter of law when materiality was a fact question for the jury.

CRIMJIG 22.11

FALSE STATEMENT TO JUDICIAL OFFICER—DEFINED

Under Minnesota law, whoever in a criminal proceeding, with intent to obstruct justice, gives

[1] a fictitious name other than a nickname, or gives a false date of birth

[2] the name and date of birth of another person to a court official

is guilty of a crime.

COMMENT

M.S.A. § 609.506, subd. 3.

CRIMJIG 22.12

FALSE STATEMENT TO JUDICIAL OFFICER—ELEMENTS

The elements of false statement to a judicial officer are:

[1] First, the defendant gave a fictitious name, other than a nickname, or a false date of birth.

[2] First, the defendant gave the name and date of birth of another person.

Second, the defendant gave the (fictitious name) (false date of birth) (name and date of birth of another person) in a criminal proceeding to a court official. A "court official" includes a judge, referee, court administrator, or any employee of the court.

Third, the defendant acted with intent to obstruct justice.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.506, subd. 3.

CRIMJIG 22.13

FALSE STATEMENT TO A PEACE OFFICER—DEFINED

Under Minnesota law, whoever, with intent to obstruct justice, gives

[1] a fictitious name (other than a nickname)

[2] gives a false date of birth

[3] gives a false or fraudulently altered identification card

[4] gives the name and birth date of another

to a peace officer, when that officer makes inquiries incident to a lawful investigatory stop or lawful arrest, or inquiries incident to executing any other duty imposed by law, is guilty of a crime.

COMMENT

M.S.A. § 609.506, subd. 1 and 2.

CRIMJIG 22.14

FALSE STATEMENT TO A PEACE OFFICER—ELEMENTS

The elements of false statement to a peace officer are:

[1] First, the defendant gave a fictitious name (other than a nickname).

[2] First, the defendant gave a false date of birth.

[3] First, the defendant gave a false or fraudulently altered identification card.

[4] First, the defendant gave the name and birth date of another person.

Second, the defendant gave the (fictitious name) (false date of birth) (false or fraudulently altered identification care) (name and date of birth of another person) to a peace officer, when that officer was making (inquiries incident to a lawful investigatory stop) (a lawful arrest) (inquiries incident to executing any duty imposed by law).

Third, the defendant acted with intent to obstruct justice.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CHAPTER 23

FALSE CLAIMS

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CRIMJIG 23.01

FALSE CLAIMS—DEFINED

Under Minnesota law, whoever, with intent to defraud, presents a claim or demand for (payment) (audit) (allowance), that to (his) (her) knowledge is false in whole or in part, to a public (officer) (body) authorized to make such (payment) (audit) (allowance), is guilty of a crime.

COMMENT

M.S.A. § 609.465.

See M.S.A. § 609.415 for the definition of public officer and employee.

The effect of this statute is to provide specific elements for a particular kind of attempted theft that would otherwise be covered by the general attempts provision. M.S.A. § 609.17. Theft of public funds is a felony even when the amount stolen is $250 or less. M.S.A. § 609.52, subd. 3(3)(d). The penalty for an attempt is one-half the penalty for the completed crime. M.S.A. § 609.17.

CRIMJIG 23.02

FALSE CLAIMS—ELEMENTS

The elements of (attempting to commit) theft of public funds are:

First, the defendant presented a claim for (payment of ________ for ________) (audit of the handling of public funds) (allowance of ________) to ________, a public (officer)[1] (body) authorized to make such (payment) (audit) (allowance). It does not matter if the claim was (paid) (approved) (allowed).

Second, the defendant knew or believed that the claim was false in whole or in part.

Third, the defendant intended to defraud. This means that the defendant intended that ________ believe the claim and in accordance with that belief (pay what the defendant claimed) (approve the defendant's ________) (allow the defendant's ________).

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

23.02

[1] *See* M.S.A. § 609.415 for the definition of public officer and employee.

CRIMJIG 23.03

PERMITTING FALSE CLAIMS—DEFINED

Under Minnesota law, a public (officer) (employee) who (pays) (audits) (allows) any claim made upon (the State) (a subdivision of the State) (a governmental instrumentality within the State) that the person knows to be false in whole or in part is guilty of a crime.

COMMENT

M.S.A. § 609.455.

See M.S.A. § 609.415 for the definition of public officer and employee.

CRIMJIG 23.04

PERMITTING FALSE CLAIMS—ELEMENTS

The elements of permitting a false claim against the government are:

First, the defendant was a public (officer) (employee).[1] A ________ is such an (officer) (employee).

Second, in this capacity, the defendant (paid) (audited and approved) (allowed) a claim made upon ________ for ________ by ________.

Third, the claim was false in whole or in part.

Fourth, the defendant knew or believed that the claim was false in whole or in part.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See State v. Bourne, 86 Minn. 426, 90 N.W. 1105 (1902) (affirming conviction of deputy county auditor).

23.04

[1] *See* M.S.A. § 609.415 for the definition of public officer and employee.

CHAPTER 24

MISCELLANEOUS CRIMES AGAINST THE GOVERNMENT

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CRIMJIG 24.01

ESCAPE FROM CUSTODY—DEFINED

Under Minnesota law, whoever escapes [while held pursuant to a lawful arrest] [while held in lawful custody on a charge or conviction of a crime] [while held in lawful custody on an allegation or adjudication of a delinquent act] [while subject to a court hold order[1]] [while on pass status or provisional discharge (according to section 253B.18)] [while a client of the Minnesota sex offender program] is guilty of a crime.

COMMENT

M.S.A. § 609.485, subd. 2(1)–(7).

24.01

[1] Pursuant to M.S.A. 253B.185 — Sexually psychopathic personality; sexually dangerous

CRIMJIG 24.02

ESCAPE FROM CUSTODY—ELEMENTS

The elements of escape from custody are:

First, the defendant was [held pursuant to lawful arrest] [held pursuant in lawful custody on a charge or conviction of a crime[1]] [held pursuant in lawful custody on an allegation or adjudication of delinquency] [while subject to a court holder order[2]] [while on pass status or provisional discharge (according to section 253B.18)] [while a client of the Minnesota sex offender program].

Second, the defendant escaped while in such custody. "Escape" includes [departure without lawful authority] [failure to return to custody following temporary leave] [absconding from electronic monitoring] [absconding after removing an electronic monitoring device from the body] [while on pass status or provisional discharge (according to section 253B.18)].

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant is guilty, you have additional (an) issue(s) to determine, and (it) (they) will be put to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are): Was the defendant in lawful custody on a felony charge? Was the defendant in lawful custody on a gross misdemeanor or

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24.02

[1] The crime is a felony, gross misdemeanor, or misdemeanor. The terms are not used because (1) the nature of the offense is a question for the jury, and (2) the prisoner may stipulate to the underlying offense, removing that issue from the jury. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984). It is an open question whether or not a defendant accused of permitting a prisoner to escape can also stipulate to the prisoner's underlying offense.

[2] Pursuant to M.S.A. 253B.185 — Sexually psychopathic personality; sexually dangerous

misdemeanor charge? The law provides ______ is a ______ charge. Was the defendant in the custody of the commissioner of corrections on an allegation or adjudication of delinquency and at least 18 years of age? If you have reasonable doubt as to the offense for which the defendant was in custody, you should answer "yes" to the lesser charge.] [Was the escape effected by violence or the threat of violence against a person? You should answer this question "yes" or "no." If you have reasonable doubt as to the answer, you should answer the question "no."]

COMMENT

M.S.A. § 609.485, subd. 2(1)–(7).

If the defendant stipulates to the nature of the offense for which he is in custody, it may be error for the trial court to refuse to accept the stipulation and thereby remove the issue from the jury. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984). In such cases, the court should not submit any questions to the jury concerning the confinement offense.

Ordinarily nothing should be said about the lawfulness of the custody or the nature of the crime (other than its degree), unless the defendant raises some question about the procedure involved, in which case an instruction specially tailored to the circumstances may be necessary. *See State v. Piri*, 295 Minn. 247, 204 N.W.2d 120 (1973). If the arrest or confinement is not lawful, the defendant is not guilty of escape in departing. *State ex rel. Law v. Ramsey County District Court*, 276 Minn. 324, 150 N.W.2d 18 (1967).

In *State v. Kjeldahl*, 278 N.W.2d 58 (Minn. 1979), the Supreme Court confirmed the views of the Committee respecting the elements of the offense of escape from custody, holding that it was unnecessary to prove specific intent.

In *State v. Lewandowski*, 443 N.W.2d 551 (Minn. App. 1989), the Court of Appeals held that the crime of escape was not committed when a defendant was sentenced, given a period of time to report to the sheriff to be committed to the custody of the commissioner of corrections, and did not report to the sheriff in a timely manner. The Court held that escape was only committed after the actual commitment to the custody of the commissioner of corrections, and under those facts the defendant was guilty of failure to appear pursuant to M.S.A. § 609.49, rather than escape.

In *Headbird v. State*, 375 N.W.2d 90 (Minn. App. 1985), and *State v. L'Italien*, 363 N.W.2d 490 (Minn. App. 1985), the Court of Appeals held that failure to return from furlough constituted the crime of escape.

The court of appeals in *State v. Wickner*, 673 N.W.2d 859 (Minn. App. 2004) held that intentionally absconding from electronic monitoring while on intensive supervised release constituted escape from lawful custody.

CRIMJIG 24.03

ESCAPE FROM A MENTAL HEALTH FACILITY—DEFINED

Under Minnesota law, whoever escapes while in (the Minnesota Security Hospital) (a regional mental health center designated by the Commissioner of Human Services) (a treatment facility)

[1] pursuant to a court commitment order after being found not guilty by reason of mental illness or mental deficiency of a crime against the person

[2] after being committed pursuant to court order as a (sexually dangerous person) (psychopathic personality)

is guilty of a crime.

COMMENT

M.S.A. § 609.485, subd. 2(4) and (5).

CRIMJIG 24.04

ESCAPE FROM A MENTAL HEALTH FACILITY—ELEMENTS

The elements of escape from a mental health facility are:

First, the defendant was confined in (the Minnesota Security Hospital) (a regional mental health center designated by the Commissioner of Human Services) (a treatment center).

[1] Second, the defendant's confinement was the result of a court commitment order after a finding of not guilty by reason of mental illness or mental deficiency [of the crime of ________[1]] [of a crime against the person]. [A crime against the person includes ________.[2]]

[2] Second, the defendant's confinement was the result of a court commitment order after a finding that the defendant was a (sexually dangerous person) (psychopathic personality).

Third, the defendant escaped while in such custody. "Escape" includes (departure without lawful authority) (failure to return to custody following temporary leave granted for a specific purpose or limited period).

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

24.04

[1] *See* M.S.A. § 253B.02, subd. 4a, for a definition of the term "crime against the person."

[2] Whether or not the designated crime is a crime against the person is a question of law for the trial court.

CRIMJIG 24.05

DEFENSE TO ESCAPE FROM A MENTAL HEALTH FACILITY

It is a defense to a prosecution for escape from (the Minnesota Security Hospital) (a regional mental health center designated by the Commissioner of Human Services) (a treatment center) that the defendant voluntarily returned to the facility within thirty days after a reasonable effort was made to provide written notice to the defendant that failure to return might result in criminal charges being filed. The burden of proof is on the State to prove that the defendant did not voluntarily return to the facility within the thirty-day period.

COMMENT

M.S.A. § 609.485, subd. 3a.

CRIMJIG 24.06

AIDING ESCAPE—DEFINED

Under Minnesota law, whoever transfers to anyone who is in lawful custody on a charge or conviction of a crime (or introduces into an institution in which another is confined) anything useable in making an escape, with the intent that it should be so used, is guilty of a crime.

COMMENT

M.S.A. § 609.485, subd. 2(2).

CRIMJIG 24.07

AIDING ESCAPE—ELEMENTS

The elements of aiding escape are:

First, ________ was held in lawful custody on a charge or conviction of a crime.[1]

Second, the defendant (transferred to ________ a ________) (or) (introduced a ________ into ________ where ________ was confined).

Third, the ________ was useable in making an escape.

Fourth, the defendant intended that the ________ be used in making an escape.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find that the defendant is guilty, you will have (an) additional issue(s) to determine, and (it) (they) will be put to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are): [Was the defendant in lawful custody on a felony charge? Was the defendant in lawful custody on a gross misdemeanor charge? Was the defendant in lawful custody on a misdemeanor charge? The law provides ________ is a ________ charge. If you have a reasonable doubt as to the offense for which the defendant was in custody, you should answer "yes"

24.07

[1] The crime is a felony, gross misdemeanor, or misdemeanor. The terms are not used because (1) the nature of the offense is a question for the jury, and (2) the prisoner may stipulate to the underlying offense, removing that issue from the jury. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984). It is an open question whether or not a defendant accused of permitting a prisoner to escape can also stipulate to the prisoner's underlying offense.

to the lesser charge.] [Was the escape effected by violence or the threat of violence against a person? You should answer this question "yes" or "no." If you have a reasonable doubt as to the answer, you should answer the question "no."]

COMMENT

M.S.A. § 609.485, subd. 2(2).

See Comment to CRIMJIG 24.02.

If the defendant admits the nature of the offense for which he is in custody, it may be error for the trial court to refuse to accept the stipulation and thereby remove the issue from the jury. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984). In such cases, the court should not submit any questions to the jury concerning the issue.

CRIMJIG 24.08

PERMITTING ESCAPE—DEFINED

Under Minnesota law, whoever, having another in lawful custody on a charge or conviction of a crime, intentionally permits an escape is guilty of a crime.

COMMENT

M.S.A. § 609.485, subd. 2(3).

CRIMJIG 24.09

PERMITTING ESCAPE—ELEMENTS

The elements of permitting escape are:

First, ________ was held in lawful custody on a charge or conviction of a crime.[1]

Second, the defendant had such control over ________ that (she) (he) could permit ________'s escape or prevent it.

Third, the defendant intentionally permitted ________ to escape. It is necessary that ________ actually escaped, if only for a brief period of time.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant guilty, you will have (an) additional issue(s) to determine, and (it) (they) will be presented to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are): [Was the inmate in lawful custody on a felony charge? Was the inmate in lawful custody on a gross misdemeanor charge? Was the inmate in lawful custody on a misdemeanor charge? The law provides ________ is a ________ charge. If you have a reasonable doubt as to the offense for which the inmate was in custody, you should answer "yes" to the lesser charge.] [Was the escape effected by violence or the threat of violence against a person? You should answer this

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24.09

[1] The crime is a felony, gross misdemeanor, or misdemeanor. The terms are not used because (1) the nature of the offense is a question for the jury, and (2) the prisoner may stipulate to the underlying offense, removing that issue from the jury. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984). It is an open question whether or not a defendant accused of permitting a prisoner to escape can also stipulate to the prisoner's underlying offense.

question "yes" or "no." If you have a reasonable doubt as to the answer, you should answer the question "no."]

COMMENT

M.S.A. § 609.485, subd. 2(3).

See Comment to CRIMJIG 24.02.

If the defendant admits the nature of the offense for which he is in custody, it is error for the trial court to refuse to accept the stipulation and thereby remove the issue from the jury. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984). In such cases, the court should not submit any questions to the jury concerning the issue.

CRIMJIG 24.10

AIDING AN OFFENDER—DEFINED

Under Minnesota law, whoever harbors, conceals, or aids another person known by the defendant to have committed a crime under the laws of Minnesota or any other state or the United States and that crime is a felony, with the intent that the other person avoid or escape from arrest, trial, conviction, or punishment is guilty of a crime.

COMMENT

M.S.A. § 609.495, subd. 1(a).

CRIMJIG 24.11

AIDING AN OFFENDER—ELEMENTS

The elements of aiding an offender are:

First, ________ committed a crime.

Second, the defendant knew that ________ had committed a crime. "To know" requires only that the defendant believed that ________ had committed a crime.

Third, the defendant harbored, concealed, or aided ________. "To harbor a person" means to furnish the person with shelter or food in such circumstances that the person is aided in avoiding detection by lawful authority. "To conceal a person" means to make it more difficult for the person to be found. The mere withholding of information as to the whereabouts of a person is not harboring, concealing, or aiding under this statute. An affirmative act of assistance is required.

Fourth, the defendant acted with the intent that ________ avoid or escape from arrest, trial, conviction, or punishment.

Fifth, the crime ________ committed was a felony.

Sixth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.495, subd. 1(a).

See M.S.A. § 609.02, subd. 9(2) for a definition of "know."

A conviction under this statute requires that the predicate offense be identified and be a felony. *State v. Hager*, 727 N.W.2d 668 (Minn. App 2007).

CRIMJIG 24.12

OBSTRUCTING INVESTIGATION—ACCOMPLICE AFTER THE FACT—DEFINED

Under Minnesota law, whoever, knowing that another person has committed a criminal act, intentionally aids that person (by destroying or concealing evidence of the crime) (by providing false or misleading information about the crime) (by receiving the proceeds of the crime) (by obstructing the investigation or prosecution of the crime), is guilty of a crime.

COMMENT

M.S.A. § 609.495, subd. 3.

CRIMJIG 24.13

OBSTRUCTING INVESTIGATION—ACCOMPLICE AFTER THE FACT—ELEMENTS

The elements of accomplice after the fact are:

First, ________ committed the crime of ________.[1]

Second, the defendant knew or had reason to know that ________ committed the crime.

Third, the defendant (destroyed or concealed evidence of the crime) (provided false or misleading information about the crime) (received the proceeds of the crime) (obstructed the investigation or prosecution of the crime).

Fourth, the defendant acted with intent to aid ________.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

24.13

[1] A violation listed in M.S.A. § 609.11, subd. 9, or the laws of another State or of the United States. This provision also includes an act by a juvenile that would be a crime if committed by an adult.

CRIMJIG 24.14

HARBORING A PROBATION OR PAROLE VIOLATOR—DEFINED

Under Minnesota law, whoever knowingly harbors, conceals, or aids a person who is on probation, parole, or supervised release because of a felony-level conviction, and for whom an arrest and detention order has been issued, with the intent that the person evade or escape being taken into custody under the order, is guilty of a crime.

COMMENT

M.S.A. § 609.495, subd. 1(b).

CRIMJIG 24.15

HARBORING A PROBATION OR PAROLE VIOLATOR—ELEMENTS

The elements of harboring a probation or parole violator are:

First, ________ was on probation, parole, or supervised release because of a felony-level conviction.

Second, the defendant knew that ________ was on probation, parole, or supervised release because of the conviction. "To know" requires only that the defendant believed that ________ was on probation, parole, or supervised release.

Third, an arrest and detention order had been issued to take ________ into custody for a violation of probation, parole, or supervised release.

Fourth, the defendant harbored, concealed, or aided ________ with the intent that ________ evade or escape being taken into custody pursuant to the arrest and detention order.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.495, subd. 1(b).

See M.S.A. § 609.02, subd. 9(2), for a definition of "know."

CRIMJIG 24.16

FLEEING A PEACE OFFICER IN A MOTOR VEHICLE—CAUSING DEATH OR BODILY HARM—DEFINED

Under Minnesota law, whoever, by means of a motor vehicle, flees or attempts to flee or, having exited the vehicle, subsequently flees by other means, a peace officer who is acting in lawful discharge of an official duty, and who knows or should reasonably know the person is a peace officer, and who, in the course of fleeing, causes death or bodily harm to another is guilty of a crime.

COMMENT

M.S.A. § 609.487.

CRIMJIG 24.17

FLEEING A PEACE OFFICER IN A MOTOR VEHICLE—CAUSING DEATH OR BODILY HARM—ELEMENTS

The elements of fleeing a peace officer in a motor vehicle are:

First, the defendant, by means of a motor vehicle, fled or attempted to flee (a) peace officer(s) ________. "To flee" means to (increase speed) (extinguish motor vehicle headlights or taillights) (refuse to stop the vehicle) (or) (use other means) with intent to attempt to elude a peace officer following a signal given by any peace officer to the driver of a motor vehicle.

"Peace officer" means an employee of a political subdivision or a state law enforcement agency who is licensed by the Minnesota board of peace officer standards and training, is charged with the prevention and detection of crime and the enforcement of the general criminal laws of the State, and has the full power of arrest, and includes the Minnesota State Patrol and Minnesota conservation officers and employees of a law enforcement agency of a federally recognized tribe who are licensed by the Minnesota board of peace officer standards and training.

Second, the peace officer(s) (was) (were) acting in the lawful discharge of an official duty.

Third, the defendant knew or should reasonably have known that it (was) (were) (a) peace officer(s) from whom the defendant was fleeing or attempting to flee.

[Fourth, the defendant, in the course of fleeing or attempting to flee in a motor vehicle or, having exited the vehicle, subsequently flees by other means, caused (the death of ________.) (great bodily harm to ________. "Great bodily harm" means bodily harm that creates a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any part of the body, or other serious bodily harm.) (substantial bodily harm to ________. "Substantial bodily harm" means bodily harm that

involves a temporary but substantial disfigurement, causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or causes a fracture of any bodily member.)]

[Fourth] [Fifth], the defendant's act took place on or about ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

In *State v. Johnson*, 374 N.W.2d 285 (Minn. App. 1985), the Court of Appeals held that, under the particular facts of that case, it was reversible error to fail to instruct the jury in the definition of intent and the element of specific intent required under M.S.A. § 609.487.

CRIMJIG 24.18

KILLING OR HARMING PUBLIC SAFETY DOG—DEFINED

Under Minnesota law, whoever intentionally and without justification [causes the death of] [causes substantial or great bodily harm to] [demonstrable bodily harm to] a [police] [corrections] [arson] [search and rescue] dog when the dog is involved in [law enforcement] [corrections] [fire investigation or apprehension] [search and rescue duties] or in the custody of or under the control of a [peace officer] [correctional facility employee] [trained handler] is guilty of a crime.

COMMENT

M.S.A. § 609.596.

CRIMJIG 24.19

KILLING OR HARMING PUBLIC SAFETY DOG—ELEMENTS

The elements of [killing] [injuring] a [police] [corrections] [arson] [search and rescue] dog are:

[1] First, the defendant caused the death of ________, [a police] [a corrections] [an arson] [a search and rescue] dog.

[2] First, the defendant caused ________ [a police] [a corrections] [an arson] [a search and rescue] dog (substantial bodily harm) (or) (great bodily harm) (demonstrable bodily harm). "Substantial bodily harm" means bodily injury that involves a temporary but substantial disfigurement, causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or causes a fracture of any bodily member. "Great bodily harm" means bodily injury that creates a high probability of death, or causes serious permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm. "Demonstrable bodily harm" means bodily harm that is capable of being perceived by a person other than the victim.

Second, the defendant acted intentionally and without justification in causing the (death) [(substantial) (or) (great bodily) harm] to (________), [(a police) (a corrections) (an arson) (a search and rescue)] dog.

Third, (________) [the (police) (correctional) (arson) (search and rescue) dog] was involved in [a (law enforcement) (corrections) (fire) investigation or apprehension] [search and rescue duties], or was under the control of a (peace officer) (correctional facility employee) (trained handler).

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable

doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.596.

CRIMJIG 24.20

FELONY—FAILURE TO APPEAR—DEFINED

Under Minnesota law, whoever has been (charged with) (convicted of) a felony and released from custody (with or without bail or recognizance), on condition that the released person personally appear when required with respect to the (charge) (conviction), and intentionally fails to appear when required after having been notified that failure to appear for a court appearance is a criminal offense, is guilty of a crime.

COMMENT

M.S.A. § 609.49, subd. 1.

CRIMJIG 24.21

FELONY—FAILURE TO APPEAR—ELEMENTS

The elements of failure to appear are:

First, the defendant was (charged with) (convicted of) (________)[1] (a felony).

Second, the defendant had been released from custody (with or without bail or recognizance), on the condition that the defendant personally appear when required with respect to the (charge) (conviction).

Third, the defendant had been given notice that failure to appear for a court appearance is a criminal offense.

Fourth, the defendant intentionally failed to appear for the court appearance as required.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

If the defendant stipulates to the element of the prior charge, this instruction should be modified so as to remove this issue from the jury. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

24.21

[1] The charged offense.

CRIMJIG 24.22

GROSS MISDEMEANOR/MISDEMEANOR FAILURE TO APPEAR—DEFINED

Under Minnesota law, whoever has been charged with a (gross misdemeanor) (misdemeanor), and intentionally fails to appear in court for trial after having been notified that failure to appear for a court appearance is a criminal offense, is guilty of a crime.

COMMENT

M.S.A. § 609.49, subd. 2.

CRIMJIG 24.23

GROSS MISDEMEANOR/MISDEMEANOR—FAILURE TO APPEAR—ELEMENTS

The elements of failure to appear are:

First, the defendant was charged with (a) (gross misdemeanor) (misdemeanor) (________).[1]

Second, the defendant had been given notice that failure to appear for trial is a criminal offense.

Third, the defendant failed to appear for trial as required.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

If the defendant stipulates to the prior offense, this instruction should be modified so as to remove this issue from the jury. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

24.23

[1] The charged offense.

CRIMJIG 24.24

FAILURE TO APPEAR—DEFENSE

The defendant has been charged with failure to appear. It is a defense to this charge that the defendant's failure to appear in court as required was due to circumstances beyond the defendant's control.

The burden is on the State to prove beyond a reasonable doubt that the defendant's failure to appear was not due to circumstances beyond the defendant's control.

COMMENT

M.S.A. § 609.49, subd. 3.

While the statute provides this to be an affirmative defense, the Committee believes the burden of proof remains with the prosecution. *See* Comment to CRIMJIG 7.05.

CRIMJIG 24.25

OBSTRUCTING ARREST OR LEGAL PROCESS—DEFINED

Under Minnesota law, whoever intentionally physically

[1] obstructs, hinders, or prevents the lawful execution of any legal process

[2] obstructs, hinders, or prevents the apprehension of another person on a charge or conviction of a criminal offense

[3] obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties

[4] interferes with or obstructs a firefighter while the firefighter is engaged in the performance of official duties

[5] interferes with or obstructs a member of an ambulance service personnel crew who is providing, or attempting to provide, emergency care

[6] by force or threat of force endeavors to obstruct an employee of the Department of Revenue while the employee is lawfully engaged in the performance of official duties for the purpose of deterring or interfering with the performance of those duties

is guilty of a crime.

COMMENT

M.S.A. § 609.50.

CRIMJIG 24.26

OBSTRUCTING ARREST OR LEGAL PROCESS—ELEMENTS

The elements of the crime are:

[1] First, ________ was attempting to lawfully execute legal process. The ________ of a ________ is the execution of legal process.

Second, the defendant physically obstructed, hindered, or prevented the execution of legal process. "Physically obstructed, hindered, or prevented" means the words and acts of the defendant must have the effect of substantially frustrating or hindering the officer in the performance of the officer's duties. [If the defendant's conduct consisted only of offensive, obscene, or abusive language, you must also find that the words were "fighting words" or any other words that by themselves have the effect of physically obstructing or interfering with an officer in the performance of the officer's duties. "Fighting words" are words that constitute personally offensive epithets that, when spoken to the ordinary person, under the particular circumstances of the case, are, as a matter of common knowledge, inherently likely to provoke a violent reaction or incite an immediate breach of the peace by those to whom such words are addressed. The offense may be based upon the utterance of fighting words alone, without resulting in actual violence. The focus is upon the nature of the words and the circumstances in which they were spoken, rather than upon the actual response.]

[2] First, ________ was attempting to take ________ into custody on a criminal charge or upon ________'s conviction.

Second, the defendant physically obstructed, hindered, or prevented the taking of ________ into custody. "Physically obstructed, hindered, or prevented" means the words and acts of the defendant must have the effect of substantially frustrating or hindering the officer in the performance of the officer's duties. [If the defendant's conduct consisted only of offensive, obscene, or abusive language, you must also find that the words were "fighting words" or any other words that by themselves have the effect of physically obstructing or interfering with an officer in the performance of the officer's duties. "Fighting words" are words that constitute personally offensive epithets that, when spoken to the ordinary person, under the particular circumstances of the case, are, as a matter of common knowledge, inherently likely to provoke a violent reaction or incite an immediate breach of the peace by those to whom such words are addressed. The offense may be based upon the utterance of fighting words alone, without resulting in actual violence. The focus is upon the nature of the words and the circumstances in which they were spoken, rather than upon the actual response.]

[3] First, ________ was a peace officer engaged in the performance of official duties. A ________ is a peace officer.

Second, the defendant physically obstructed, resisted, or interfered with ________ in the performance of official duties. "Physically obstructed, resisted or interfered with" means the words and acts of the defendant must have the effect of substantially frustrating or hindering the officer in the performance of the officer's duties. [If the defendant's conduct consisted only of offensive, obscene, or abusive language, you must also find that the words were "fighting words" or any other words that by themselves have the effect of physically obstructing or interfering with an officer in the performance of the officer's duties. "Fighting words" are words that constitute personally offensive epithets that, when spoken to the ordinary person, under the particular circumstances of the case, are, as a matter of common knowledge, inherently likely to provoke a violent reaction or incite an immediate breach of the peace by those to whom such words are addressed. The offense may be based upon the utterance of fighting words alone, without resulting in actual violence. The focus is upon the nature of the words and the circumstances in which they were spoken, rather than upon the actual response.]

[4] First, ________ was a firefighter engaged in official duties.

Second, the defendant physically interfered with or obstructed a firefighter engaged in official duties. "Physically interfered with or obstructed" means the words and acts of the defendant must have the effect of substantially frustrating or hindering the officer in the performance of the officer's duties. [If the defendant's conduct consisted only of offensive, obscene, or abusive language, you must also find that the words were "fighting words" or any other words that by themselves have the effect of physically obstructing or interfering with an officer in the performance of the officer's duties. "Fighting words" are words that constitute personally offensive epithets that, when spoken to the ordinary person, under the particular circumstances of the case, are, as a matter of common knowledge, inherently likely to provoke a violent reaction or incite an immediate breach of the peace by those to whom such words are addressed. The offense may be based upon the utterance of fighting words alone, without resulting in actual violence. The focus is upon the nature of the words and the circumstances in which they were spoken, rather than upon the actual response.]

[5] First, ________ was a member of an ambulance service personnel crew[1] who was providing, or attempting to provide, emergency care.

Second, the defendant physically interfered with or obstructed a member of an ambulance service personnel crew who was providing or attempting to provide emergency care. "Physically interfered with or obstructed" means the words and acts of the defendant must have the effect of substantially frustrating or hindering the officer in the performance of the officer's duties. [If the defendant's conduct consisted only of offensive, obscene, or abusive language, you must also find that the words were "fighting words" or any other words that by themselves have the effect of physically obstructing or interfering with an officer in the performance of the officer's duties. "Fighting words" are words that constitute personally offensive epithets that, when spoken to the ordinary person, under the particular circumstances of the case, are, as a matter of common knowledge, inherently likely to provoke a violent reaction or incite an imme-

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24.26

[1] See M.S.A. § 144E.001, subd. 3a for definition of ambulance service personnel crew.

diate breach of the peace by those to whom such words are addressed. The offense may be based upon the utterance of fighting words alone, without resulting in actual violence. The focus is upon the nature of the words and the circumstances in which they were spoken, rather than upon the actual response.]

[6] First, ________ was an employee of the department of revenue, lawfully engaged in the performance of official duties.

Second, the defendant by force or threat of force endeavored to physically obstruct ________ from the performance of official duties. "Physically obstruct" means the words and acts of the defendant must have the effect of substantially frustrating or hindering the officer in the performance of the officer's duties. [If the defendant's conduct consisted only of offensive, obscene, or abusive language, you must also find that the words were "fighting words" or any other words that by themselves have the effect of physically obstructing or interfering with an officer in the performance of the officer's duties. "Fighting words" are words that constitute personally offensive epithets that, when spoken to the ordinary person, under the particular circumstances of the case, are, as a matter of common knowledge, inherently likely to provoke a violent reaction or incite an immediate breach of the peace by those to whom such words are addressed. The offense may be based upon the utterance of fighting words alone, without resulting in actual violence. The focus is upon the nature of the words and the circumstances in which they were spoken, rather than upon the actual response.]

Third, the defendant acted with the intention of (obstructing, hindering, or preventing) (interfering with) (deterring or interfering with) ________.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant is guilty, you have (an) additional

issue(s) to determine, and (it) (they) will be put in the form of (a) question(s) on the verdict form. The question(s) (are) (is):

[Did the defendant know or have reason to know that the act created a risk of death, substantial bodily harm, or serious property damage? "Substantial bodily harm" means bodily harm that involves a temporary but substantial disfigurement, causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or causes a fracture of any bodily member.

[Did the act cause death, substantial bodily harm, or serious property damage?

[Was the defendant's act accompanied by force or violence or a threat of force or violence?

[You will answer (these) (this) question(s) "yes" or "no." If you have a reasonable doubt as to the answer, you should answer "no."]

COMMENT

M.S.A. § 609.50.

See CRIMJIG 12.01 for the definition of force or violence.

The Supreme Court, in *State v. Ihle*, 640 N.W.2d 910 (Minn. 2002), reiterated its holding from *State v. Krawsky*, 426 N.W.2d 875 (Minn. 1988) that the statute applies only to words and acts that have the effect of physically obstructing or interfering with a police officer. The words or acts must have the effect of "substantially frustrating or hindering the officer in the performance of his duties." *Id*. The Supreme Court indicated that the statute might be used to punish "fighting words" or any other words that have the effect of physically obstructing or interfering with a police officer.

In *State v. Krawsky*, 426 N.W.2d 875 (Minn. 1988), the Supreme Court held that M.S.A. § 609.50 was directed solely at a particular kind of physical act that physically obstructs or interferes with an officer. The Court affirmed its holding in *State v. Tomlin*, 622 N.W.2d 546 (Minn. 2001) that mere lies and omissions by the defendant did not physically obstruct the officers during their investigation.

CRIMJIG 24.27

FELONY CRIMINAL CONTEMPT—DEFINED

Under Minnesota law, whoever knowingly and willfully disobeys a subpoena lawfully issued in relation to a crime of violence, with the intent to obstruct the criminal justice process, is guilty of a crime.

COMMENT

M.S.A. § 588.20, subd. 1.

CRIMJIG 24.28

FELONY CRIMINAL CONTEMPT—ELEMENTS

The elements of criminal contempt are:

First, the defendant knowingly and willfully disobeyed a subpoena.

Second, the subpoena was issued in relation to a crime of violence. ________[1] is a crime of violence.

Third, the defendant acted with the intent to obstruct the criminal justice process.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

24.28

[1] The state correctional facility or state hospital, as defined by M.S.A. § 243.55, subd. 3.

CRIMJIG 24.29

CRIMINAL CONTEMPT—DEFINED

Under Minnesota law, whoever

[1] willfully (disobeys) (resists) the lawful process or other mandate of a court,

[2] publishes a false or grossly inaccurate report of a court proceeding,

is guilty of a crime.

COMMENT

M.S.A. § 588.20, subd. 2(4), (5) and (7).

The language contained in [1] is actually a combination of subd. 2 (4) and (5) of the statute, which prohibit, respectively, willfully disobeying and willfully resisting the lawful process or mandate of the court. The subdivision under which the defendant has been charged will dictate which word(s) to use. The same procedure should then be followed in reading the first element of CRIMJIG 24.30, relating to the elements of criminal contempt.

Although the statute identifies several types of criminal contempt, four of them necessarily occur in the presence of the court and, thus, would constitute direct contempt, which is punished summarily without a jury trial. Therefore, the instruction covers only those types of contempt that are indirect or constructive contempt, and occur outside the presence of the court, thereby entitling the defendant to a jury trial.

CRIMJIG 24.30

CRIMINAL CONTEMPT—ELEMENTS

The elements of criminal contempt are:

[1] First, the defendant willfully (disobeyed) (resisted) the lawful process or other mandate of a court.

[2] First, the defendant published a false or grossly inaccurate report of the court's proceedings. No person shall be punished for publishing a true, full, and fair report of a trial, argument, decision, or other proceeding had in court.

Second, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

This instruction addresses constructive criminal contempt, which must be prosecuted by criminal complaint.

Constructive criminal contempt is conduct "not committed in the immediate presence of the court, and of which it has no personal knowledge . . ." M.S.A. § 588.01, subd. 3. It is only such conduct that entitles the defendant to a jury trial, since direct criminal contempt that occurs in the court's presence may be heard and punished summarily (i.e., without a jury) and, thus, would not require jury instruction. M.S.A. §§ 588.01, subd. 2, and 588.03; *Knajdek v. West*, 278 Minn. 282, 153 N.W.2d 846 (1967); *Peterson v. Peterson*, 278 Minn. 275, 153 N.W.2d 825 (1967); *Zieman v. Zieman*, 265 Minn. 190, 121 N.W.2d 77 (1963).

While M.S.A. § 588.20 is titled "criminal contempt," the following acts or omissions defined as "constructive contempt" under M.S.A. § 588.01, subds. 1, 2, and 4–10, may also arguably constitute constructive criminal contempt and thereby necessitate a jury trial:

> [1] Misbehavior,. . . wilful neglect or violation of duty by an attorney, clerk, sheriff, coroner, or other person [performing] a judicial ministerial service;

[2] Deceit or abuse of the process or proceedings of the court by a party [thereto];

* * *

[4] Assuming to be an attorney or other officer of the court . . .;

[5] Rescuing any person or property in the custody of an officer . . .;

[6] Unlawfully detaining a witness or party . . . from the court;

[7] Any other unlawful interference with the . . . court;

[8] Disobedience of a subpoena . . . or refusing to be sworn or to answer a witness;

[9] [N]eglecting to attend or serve as [a juror] . . .;

[10] Disobedience by an inferior tribunal . . .

[11] Failure or refusal to pay a surcharge levied pursuant to section 357.021, subdivision 6.

M.S.A. § 518B.01, subd. 14(c), provides that violation of an order for protection constitutes contempt of court. The offense would also be charged by criminal complaint, and the foregoing instructions should be used.

In the event such acts are charged, the criminal contempt instruction must be modified accordingly. Whether constructive contempt is criminal or civil in nature depends upon the nature of the acts alleged. The offense charged constitutes criminal contempt whenever one cannot purge himself or herself for past misconduct to preserve the dignity of the court. *Hopp v. Hopp*, 279 Minn. 170, 156 N.W.2d 212 (1968). In contrast, the purpose of civil contempt is to coerce performance so as to effectuate a remedy given to a party. *In re R.L.W.'s Welfare*, 309 Minn. 489, 245 N.W.2d 204 (1976).

In *Matter of Welfare of E.J.B.*, 466 N.W.2d 768 (Minn. App. 1991), the Court of Appeals held that contempt of court, which consisted of perjury in testimony in a delinquency proceeding, was criminal contempt because it was for a past act and intended to punish rather than to coerce future compliance with a court order by imposition of sanctions. The Court held that under these facts, such conduct constituted a constructive criminal contempt, and the defendant had all rights afforded to an individual charged with a crime.

In *In re the Contempt of Armentrout*, 480 N.W.2d 685 (Minn. App.

1992), the Court of Appeals held that four acts of refusal to answer questions while serving as a witness in a criminal trial constituted a single behavioral incident of criminal contempt.

In *State v. Garcia*, 481 N.W.2d 133 (Minn. App. 1992), the Court of Appeals held that contempt of court is not direct when the judge does not have personal knowledge at the time of the conduct of the facts that constitute the contempt and are essential for determination of guilt. In those cases, the contempt is constructive, rather than direct, and the criminal contempt could not be summarily punished, but could only be punished following a conviction after a trial on the merits.

In *State v. Legarde*, 479 N.W.2d 434 (Minn. App. 1992), the Court of Appeals ruled that a supervised release agreement does not constitute a court order, and, therefore, a violation of the agreement does not constitute criminal contempt of court.

In *State v. Martin*, 555 N.W.2d 899 (Minn. 1996), the Supreme Court held that the defendant's refusal to answer questions when ordered to do so while testifying as a witness in his own defense constitutes direct contempt of court, which is summarily punishable by the court. The Court held that the District Court could delay imposing summary punishment on a criminal defendant until after the jury had returned a verdict.

CRIMJIG 24.31

INTRODUCTION OF CONTRABAND—FELONY—DEFINED

Under Minnesota law, whoever brings, sends, or in any manner causes to be introduced into any (state correctional facility) (state hospital), or within or upon the grounds belonging to or land controlled by such facility, (a controlled substance) (a firearm) (a weapon) (explosives of any kind) without the consent of the facility's chief executive officer, is guilty of a crime.

COMMENT

M.S.A. § 243.55.

CRIMJIG 24.32

INTRODUCTION OF CONTRABAND—FELONY—ELEMENTS

The elements of introduction of contraband are:

First, the defendant brought, sent, or in any manner caused to be introduced into ________,[1] or upon the grounds of or land controlled by ________, (a controlled substance[2]) (a firearm[3]) (a weapon[4]) (an explosive[5] of any kind).

Second, the defendant's act was done without the consent of the chief executive officer of the facility.

Third, the defendant's act occurred on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

24.32

[1] The state correctional facility or state hospital, as defined by M.S.A. § 243.55, subd. 3.

[2] Whether a particular substance is a controlled substance is a question of law to be determined by the court.

[3] For the definition of a firearm, see M.S.A. § 609.666, subd. 1(a).

[4] The term "weapon" is undefined. *See* M.S.A. § 609.02, subd. 6, for the definition of a dangerous weapon.

[5] For the definition of an explosive, see M.S.A. § 299F.72.

CRIMJIG 24.33

FALSELY REPORTING A CRIME—DEFINED

Under Minnesota law, whoever, knowing the information is false and intending that the officer shall act in reliance upon it, informs a law enforcement officer that a crime has been committed is guilty of a crime.

COMMENT

M.S.A. § 609.505.

CRIMJIG 24.34

FALSELY REPORTING A CRIME—ELEMENTS

The elements of falsely reporting a crime are:

First, the defendant informed a law enforcement officer that a crime had been committed.

Second, the defendant knew that the report was false.

Third, the defendant intended that the law enforcement officer act in reliance upon the report.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of a question on the verdict form. The question is: Has the defendant previously been convicted of falsely reporting a crime? You should answer the question "yes" or "no." If you have a reasonable doubt as to answer, you should answer the question "no."]

COMMENT

The bracketed language should be used in cases that allege the defendant committed a gross misdemeanor violation of this statute. If the defendant judicially admits this violation, the jury should be instructed only as to the elements of the offense, and the prior conviction should be kept from the jury. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

CRIMJIG 24.35

USE OF BULLET-RESISTANT VEST—DEFINED

Under Minnesota law, whoever commits or attempts to commit ________[1] while wearing or possessing a bullet-resistant vest is guilty of a crime.

COMMENT

M.S.A. § 609.486.

24.35

[1] The charged gross misdemeanor or felony.

CRIMJIG 24.36

USE OF BULLET-RESISTANT VEST—ELEMENTS

The elements of use of a bullet-resistant vest are:

First, the defendant (wore) (possessed) a bullet-resistant vest. A "bullet-resistant vest" is a bullet-resistant garment that provides ballistic and trauma protection.

Second, at the time the defendant (wore) (possessed) the bullet-resistant vest, the defendant (committed) (attempted to commit) ________.[1]

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

24.36 or felony.

[1] The charged gross misdemeanor

CRIMJIG 24.37

POSSESSION OF POLICE RADIO—DEFINED

Under Minnesota law, whoever has in possession or uses a radio or device capable of receiving or transmitting a police radio signal, message, or transmission of information used for law enforcement purposes, while committing or attempting to commit a felony or the crime of fleeing a peace officer, is guilty of a crime.

COMMENT

M.S.A. § 609.856.

CRIMJIG 24.38

POSSESSION OF POLICE RADIO—ELEMENTS

The elements of possession of a police radio are:

First, the defendant (possessed) (used) (________) (a radio or device capable of receiving or transmitting a police radio signal, message, or transmission of information used for law enforcement purposes).

Second, the defendant (possessed) (used) the (________) (radio) (device) while committing or attempting to commit the offense of (fleeing a peace officer) (________).[1]

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

In the event that the defendant stipulates to the existence of the underlying offense, the court should accept that stipulation and delete the second element. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984); *State v. Allen*, 375 N.W.2d 82 (Minn. App. 1985); *State v. Clark*, 375 N.W.2d 59 (Minn. App. 1985).

24.38

[1] The court should state the involved felony offense. It may be necessary for the court to further define the elements of the underlying offense.

CRIMJIG 24.39

FLEEING A POLICE OFFICER—OTHER MEANS THAN A MOTOR VEHICLE—DEFINED

Under Minnesota law, whoever

[1] for the purpose of avoiding arrest, detention, or investigation

[2] in order to conceal or destroy potential evidence related to the commission of a crime

attempts to evade or elude a peace officer, who is acting in the lawful discharge of an official duty, by means of running, hiding, or by any other means except fleeing in a motor vehicle, is guilty of a crime.

COMMENT

M.S.A. § 609.487, subd. 6.

CRIMJIG 24.40

FLEEING A POLICE OFFICER—OTHER MEANS THAN A MOTOR VEHICLE—ELEMENTS

The elements of fleeing a police officer are:

First, the defendant (ran) (hid) (or) (fled by other means than use of a motor vehicle) in order to evade or elude a peace officer.

Second, the peace officer was acting in the lawful discharge of his duties.

[1] Third, the defendant acted for the purpose of avoiding arrest, detention, or investigation.

[2] Third, the defendant acted in order to conceal or destroy potential evidence related to the commission of a crime.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 24.41

PERMISSIVE INFERENCE FROM FLIGHT

No instruction should be given.

COMMENT

In two related cases, *State v. Green*, 719 N.W.2d 664 (Minn. 2006) and *State v. Valtierra*, 718 N.W. 2d 425 (Minn. 2006) the Supreme Court noted that "flight instructions are a species of permissive-inference instruction, and the factors leading us to reject such instructions in *State v. Litzau*, 650 N.W.2d 177 (Minn.2002) and *State v. Olson*, 482 N.W.2d 212 (Minn.1992) apply with full force to flight instructions." See also *State v. Oates*, 611 N.W.2d 580, 584 (Minn.App.2000) ("There is no need to instruct the jury that a [suspect] fleeing the scene is displaying a 'consciousness of guilt.' "). See Comments, CRIMJIGs 20.55 and 20.56 relating to permissive inference of knowing possession. Although the Supreme Court cited to the Criminal Jury Instruction Guide, CRIMJIG 4.04, the committee would note that reference is erroneous and that no instruction on permissive inference from flight has been published in the Second through the Fifth Editions of these instructions.

E. OTHER CRIMES

CHAPTER 25

COMPUTER CRIMES

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CRIMJIG 25.01

COMPUTER CRIMES—TERMS—DEFINITIONS

For the purposes of crimes relating to computers, these definitions apply:

Access. "Access" means to instruct, communicate with, store data in, or retrieve data from a computer, computer system, or computer network.

Authorization. "Authorization" means with the permission of the owner of the computer, computer system, computer network, computer software, or other property. Authorization may be limited by the owner by giving the user actual notice orally or in writing, by posting a written notice in a prominent location adjacent to the computer being used, or by using a notice displayed or announced by the computer being used.

Computer. "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of signals, including, but not limited to, electronic or magnetic impulses.

Computer Network. "Computer network" means the interconnection of a communication system with a computer through a remote terminal, or with two or more interconnected computers or computer systems, and includes private and public telecommunications networks.

Computer Program. "Computer program" means an instruction or statement, or a series of instructions or statements, in a form acceptable to a computer, that directs the functioning of a computer system in a manner designed to provide appropriate products from the computer.

Computer Security System. "Computer security system" means a software program or computer device that:

(1) is intended to protect the confidentiality and secrecy of data and information stored in or accessible through the computer system; and

(2) displays a conspicuous warning to a user that the user is entering a secure system, or requires a person seeking access to knowingly respond by use of an authorized code to the program or device in order to gain access.

Computer Software. "Computer software" means a computer program or procedures, including associated documentation, concerning the operation of a computer.

Computer System. "Computer system" means related, connected or unconnected, computer and peripheral equipment.

Destructive Computer Program. "Destructive computer program" means a computer program that performs a destructive function or produces a destructive product. A program performs a destructive function if it degrades performance of the affected computer, associated peripherals, or a computer program; disables the computer, associated peripherals, or a computer program; or destroys or alters computer programs or data. A program produces a destructive product if it produces unauthorized data, including data that make computer memory space unavailable; results in the unauthorized alteration of data or computer programs; or produces a destructive computer program, including a self-replicating computer program.

Loss. "Loss" means the greatest of the following:

(1) the retail market value of the property or services involved;

(2) the reasonable repair or replacement cost, whichever is less; or

(3) the reasonable value of the damage created by the unavailability or lack of utility of the property or services involved until repair or replacement can be made.

Property. "Property" includes, but is not limited to, electronically processed or produced data and information contained in a computer or computer software in either machine or human readable form.

Services. "Services" includes, but is not limited to, computer time, data processing, and storage functions.

COMMENT

These terms and definitions are taken from M.S.A. § 609.87. The court should include the appropriate definitions whenever the offense involves a computer crime.

CRIMJIG 25.02

COMPUTER DAMAGE—INTENTIONAL DAMAGE OR DESTRUCTION WITHOUT AUTHORIZATION—DEFINED

Under Minnesota law, whoever, intentionally and without authorization, damages or destroys any computer, computer system, computer network, computer software, or any other such property is guilty of a crime.

COMMENT

M.S.A. § 609.88, subd. 1.

CRIMJIG 25.03

COMPUTER DAMAGE—INTENTIONAL DAMAGE OR DESTRUCTION WITHOUT AUTHORIZATION—ELEMENTS

The elements of the crime of computer damage are:

First, the defendant damaged or destroyed a (computer) (computer system) (computer network) (computer software) (or) ________ (any other such property).

Second, the defendant intended to damage or destroy the (computer) (computer system) (computer network) (computer software) (or) ________ (any other such property).

Third, the damage or destruction occurred without authorization of the owner.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are):

[1] Was the loss to the owner (or the owner's agent or lessee) from the damage or destruction in excess of $2500?

[2] Was the loss to the owner (or the owner's agent or lessee) from the damage or destruction more than $500 but not more than $2500?

[3] Was the loss to the owner (or the owner's agent or lessee) from the damage or destruction less than $500?

You will answer one of these questions "yes." If you have a

reasonable doubt as to the value of the loss, you should answer "yes" to the lesser of the values you believe it had.

The value of the loss is defined as the greatest of the following: (1) the retail market value of the property or services involved; (2) the reasonable repair or replacement cost, whichever is less; or (3) the reasonable value of the damage created by the unavailability or lack of utility of the property or services involved until repair or replacement can be made.

COMMENT

M.S.A. § 609.88, subd. 1(a). *See* M.S.A. § 609.88, subd. 2, for value.

CRIMJIG 25.04

COMPUTER DAMAGE—ALTERATION WITH INTENT TO INJURE OR DEFRAUD—DEFINED

Under Minnesota law, whoever, intentionally and without authorization or with intent to injure or defraud, alters any computer, computer system, computer network, computer software, or any other such property is guilty of a crime.

COMMENT

M.S.A. § 609.88, subd. 1.

CRIMJIG 25.05

COMPUTER DAMAGE—ALTERATION WITH INTENT TO INJURE OR DEFRAUD—ELEMENTS

The elements of the crime of computer damage are:

First, the defendant altered a (computer) (computer system) (computer network) (computer software) (or) (________) (any other such property).

[1] Second, the defendant acted with the intent to (injure)(or) (defraud) ________.

[2] Second, the defendant intentionally altered the (computer) (computer system) (computer network) (computer software) (or) (________) (any other such property).

Third, the defendant's act occurred without the authorization of the owner.

[Third] [Fourth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are):

[1] Was the loss to the owner (or the owner's agent or lessee) from the damage or destruction in excess of $2500?

[2] Was the loss to the owner (or the owner's agent or lessee) from the damage or destruction more than $500 but not more than $2500?

[3] Was the loss to the owner (or the owner's agent or lessee) from the damage or destruction less than $500?

You will answer one of these questions "yes." If you have a reasonable doubt as to the value of the loss, you should answer "yes" to the lesser of the values you believe it had.

The value of the loss is defined as the greatest of the following: (1) the retail market value of the property or services involved; (2) the reasonable repair or replacement cost, whichever is less; or (3) the reasonable value of the damage created by the unavailability or lack of utility of the property or services involved until repair or replacement can be made.

COMMENT

M.S.A. § 609.88, subd. 1(b).

See CRIMJIG 25.01 for Computer Crimes definitions.

CRIMJIG 25.06

COMPUTER DAMAGE—DESTRUCTIVE COMPUTER PROGRAM—DEFINED

Under Minnesota law, whoever, without authorization and with intent to damage or destroy a computer, computer system, computer network, computer software, or any other such property, distributes a destructive computer program is guilty of a crime.

COMMENT

M.S.A. § 609.88, subd. 1.

CRIMJIG 25.07

COMPUTER DAMAGE—DESTRUCTIVE COMPUTER PROGRAM—ELEMENTS

The elements of the crime of destructive computer programming are:

First, the defendant distributed a destructive computer program.

Second, the defendant acted without authorization of the owner.

Third, the defendant acted with the intent to damage or destroy (a computer program) (a computer system) (a computer network) (computer software) (or) (________) (any other such property).

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are):

[1] Was the loss to the owner (or the owner's agent or lessee) from the damage or destruction in excess of $2500?

[2] Was the loss to the owner (or the owner's agent or lessee) from the damage or destruction more than $500 but not more than $2500?

[3] Was the loss to the owner (or the owner's agent or lessee) from the damage or destruction less than $500?

You will answer one of these questions "yes." If you have a

reasonable doubt as to the value of the loss, you should answer "yes" to the lesser of the values you believe it had.

The value of the loss is defined as the greatest of the following: (1) the retail market value of the property or services involved; (2) the reasonable repair or replacement cost, whichever is less; or (3) the reasonable value of the damage created by the unavailability or lack of utility of the property or services involved until repair or replacement can be made.

COMMENT

M.S.A. § 609.88, subd. 1(c).

See CRIMJIG 25.01 Computer Crimes definitions.

CRIMJIG 25.08

COMPUTER THEFT—ACCESS—DEFINED

Under Minnesota law, whoever, intentionally and without authorization or claim of right, accesses or causes to be accessed any computer, computer system, computer network, or any part thereof for the purposes of obtaining services or property is guilty of a crime.

COMMENT

M.S.A. § 609.89, subd. 1.

CRIMJIG 25.09

COMPUTER THEFT—ACCESS—ELEMENTS

The elements of the crime of computer theft are:

First, the defendant intentionally accessed or caused to be accessed a (computer) (computer system) (computer network) (or any part thereof).

Second, the defendant acted for the purpose of obtaining services or property.

Third, the defendant acted without authorization of (________) (the owner) (claim of right).

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are):

[1] Was the value of the loss to the owner (or the owner's agent or lessee) from the computer theft more than $2500?

[2] Was the value of the loss to the owner (or the owner's agent or lessee) from the computer theft more than $500 but not more than $2500?

[3] Was the value of the loss to the owner (or the owner's agent or lessee) from the computer theft not more than $500?

You will answer one of these questions "yes." If you have a reasonable doubt as to the value of the loss, you should answer "yes" to the lesser of the values you believe it may have had.

The value of the loss is defined as the greatest of the following: (1) the retail market value of the property or services involved; (2) the reasonable repair or replacement cost, whichever is less; or (3) the reasonable value of the damage created by the unavailability or lack of utility of the property or services involved until repair or replacement can be made.

COMMENT

M.S.A. § 609.89, subd. 1(a).

CRIMJIG 25.10

COMPUTER THEFT—TAKING, TRANSFERRING, CONCEALING, OR RETAINING—DEFINED

Under Minnesota law, whoever, intentionally and without claim of right, and with intent to deprive the owner of use or possession, takes, transfers, conceals, or retains possession of any computer, computer system, or any computer software or data contained in a computer, computer system, or computer network is guilty of a crime.

CRIMJIG 25.11

COMPUTER THEFT—TAKING, TRANSFERRING, CONCEALING, OR RETAINING—ELEMENTS

The elements of the crime of computer theft are:

First, the defendant intentionally took, transferred, concealed, or retained possession of a (computer) (computer system) (computer software) (data contained in a computer, computer system, or computer network).

Second, the defendant acted without claim of right.

Third, the defendant acted with intent to deprive the owner of use or possession of the (computer) (computer system) (computer software) (data contained in a computer, computer system, or computer network).

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are):

[1] Was the value of the loss to the owner (or the owner's agent or lessee) from the computer theft more than $2500?

[2] Was the value of the loss to the owner (or the owner's agent or lessee) from the computer theft more than $500 but not more than $2500?

[3] Was the value of the loss to the owner (or the owner's agent or lessee) from the computer theft not more than $500?

You will answer one of these questions "yes." If you have a reasonable doubt as to the value of the loss, you should answer "yes" to the lesser of the values you believe it may have had.

The value of the loss is defined as the greatest of the following: (1) the retail market value of the property or services involved; (2) the reasonable repair or replacement cost, whichever is less; or (3) the reasonable value of the damage created by the unavailability or lack of utility of the property or services involved until repair or replacement can be made.

COMMENT

M.S.A. § 609.89, subd. 1(b).

CRIMJIG 25.12

UNAUTHORIZED COMPUTER ACCESS—DEFINED

Under Minnesota law, whoever, intentionally and without authorization, attempts to or penetrates a computer security system is guilty of a crime.

COMMENT

M.S.A. § 609.891.

CRIMJIG 25.13

UNATHORIZED COMPUTER ACCESS—ELEMENTS

The elements of unauthorized computer access are:

First, the defendant attempted to penetrate or penetrated a computer security system.

[Give CRIMJIGs 5.01 and 5.02 on Attempt if appropriate]

Second, the defendant's act was intentional.

Third, the defendant acted without the authorization of (________) (the person in lawful possession of the ________).

[Fourth, the defendant's act created a grave risk of causing the death of a person.]

[Fourth, the defendant had a prior conviction for unauthorized computer access that created a risk to public health and safety.[1]]

[Fourth, the defendant's act created a risk to public health and safety.]

[Fourth, the defendant's act compromise the security of data protected as a (trade secret) (not public)? [The statutes of Minnesota provide that ________ is non-public data.][2]

[Fourth, defendant has been convicted of a second or subsequent misdemeanor violation of unauthorized computer access within five years of the current offense.[3]]

25.13

[1] If defendant stipulates to the prior conviction and its effect, this element should be eliminated. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

[2] *See* M.S.A. § 609.52, subd. 2(8), for protected trade secret data. Whether data is classified as nonpublic under M.S.A. § 13.02, subd. 8a, is a legal issue to be determined by the court.

[3] If defendant stipulates to the prior conviction and its effect, this element should be eliminated. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 25.14

TELECOMMUNICATIONS AND INFORMATION SERVICES FRAUD—DEFINED

Under Minnesota law, whoever with intent to evade a lawful charge obtains telecommunications service for the person's own use by fraudulent means is guilty of a crime.

COMMENT

M.S.A. § 609.893, subd. 1, and M.S.A. § 609.892, subd. 6.

CRIMJIG 25.15

TELECOMMUNICATIONS AND INFORMATION SERVICES FRAUD—ELEMENTS

The elements of telecommunications and information services fraud are:

First, the defendant obtained from ________ telecommunications service for the defendant's own use. "Telecommunications service" means a service that, in exchange for pecuniary consideration, provides or offers to provide transmission of messages, signals, facsimiles, or other communication between persons who are physically separated from each other by telephone, telegraph, cable, wire, fiber optic cable, or the projection of energy without physical connection. The definition applies when the telecommunications service originates or ends or both originates and ends in this state.

Second, the defendant acted with the intent to evade a lawful charge for the telecommunications service.

Third, the defendant obtained the telecommunications service by fraudulent means.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are):

[1] Was the value of the services obtained in excess of $2,500?

[2] Was the value of the services obtained more than $500, but not more than $2,500?

[3] Was the value of the services obtained $500 or less?

You will answer one of these questions "yes." If you have a reasonable doubt as to the value of the services obtained, you should answer "yes" to the lesser of the values you believe it had. [In determining the value of the services obtained under one scheme or course of conduct, you may aggregate the values of the services obtained.]

CRIMJIG 25.16

FACILITATION OF TELECOMMUNICATIONS FRAUD—PROVIDE TO ANOTHER—DEFINED

Under Minnesota law, whoever makes available to another (a telecommunications device) (information) with intent to facilitate the other person to obtain telecommunications service for that other person's own use by fraudulent means and with intent to evade a lawful charge is guilty of a crime.

COMMENT

M.S.A. § 609.893, subd. 2

CRIMJIG 25.17

FACILITATION OF TELECOMMUNICATIONS FRAUD—PROVIDE TO ANOTHER—ELEMENTS

The elements of facilitation of telecommunications fraud are:

First, the defendant made available to (________) (another) (a telecommunications device) (information in order to facilitate telecommunications fraud). A "telecommunications device" is an instrument, apparatus, equipment mechanism, operating procedure, or code that is designed or adapted for a particular use, and that is intended or can be used to commit telecommunications and information services fraud, or to facilitate the commission of telecommunications and information services fraud. The term includes, but is not limited to, computer hardware, software, programs, electronic mail system, voice mail system, identification validation system, private branch exchange, or any other means of facilitating telecommunications service.

Second, the defendant made the (telecommunications device) (information) available to (________) (another) with the intent to facilitate the commission of telecommunications and information services fraud by (________) (another).[1]

Third, the (telecommunications device) (information) allowed ________ (the other) obtain telecommunication services by fraudulent means.

Fourth, the (telecommunications device) (information) allowed ________ (the other) to intentionally evade a legal charge.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven be-

25.17

[1] *See* CRIMJIGs 25.14 and 25.15 for the definition and elements of telecommunications and information services fraud.

yond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are):

[1] Was the value of the services obtained in excess of $2,500?

[2] Was the value of the services obtained more than $500, but not more than $2,500?

[3] Was the value of the services obtained $500 or less?

You will answer one of these questions "yes." If you have a reasonable doubt as to the value of the services obtained, you should answer "yes" to the lesser of the values you believe it had. [In determining the value of the services obtained under one scheme or course of conduct, you may aggregate the values of the services obtained.]

COMMENT

M.S.A. § 609.893, subd. 2(1).

CRIMJIG 25.18

FACILITATION OF TELECOMMUNICATIONS FRAUD—ADVERTISE—DEFINED

Under Minnesota law, whoever, advertises to make available to another (a telecommunications device) (information) with intent to facilitate another person to evade a lawful charge for telecommunications service by fraudulent means for that other person's own use, is guilty of a crime.

COMMENT

M.S.A. § 609.893, subd. 2.

CRIMJIG 25.19

FACILITATION OF TELECOMMUNICATIONS FRAUD—ADVERTISE—ELEMENTS

The elements of facilitation of telecommunications fraud are:

First, the defendant advertised to make available to (________) (another) (a telecommunications device) (information in order to facilitate telecommunications fraud). A "telecommunications device" is an instrument, apparatus, equipment mechanism, operating procedure, or code that is designed or adapted for a particular use, and that is intended or can be used to commit telecommunications and information services fraud or facilitate the commission of telecommunications and information services fraud. The term includes, but is not limited to, computer hardware, software, programs, electronic mail system, voice mail system, identification validation system, private branch exchange, or any other means of facilitating telecommunications service.

Second, the defendant advertised (the device) (the information) to (________) (another) with the intent to facilitate the commission of telecommunications and information services fraud by (________) (another).[1]

Third, the (telecommunications device) (information) allowed ________ (the other) obtain telecommunication services by fraudulent means.

Fourth, the (telecommunications device) (information) allowed ________ (the other) to intentionally evade a legal charge.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

25.19

[1] *See* CRIMJIGs 25.14 and 25.15 for the definition and elements of telecommunications and information services fraud.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are):

[1] Was the value of the services obtained in excess of $2,500?

[2] Was the value of the services obtained more than $500, but not more than $2,500?

[3] Was the value of the services obtained $500 or less?

You will answer one of these questions "yes." If you have a reasonable doubt as to the value of the services obtained, you should answer "yes" to the lesser of the values you believe it had. [In determining the value of the services obtained under one scheme or course of conduct, you may aggregate the values of the services obtained.]

COMMENT

M.S.A. § 609.893, subd. 2(1).

CRIMJIG 25.20

FACILITATION OF TELECOMMUNICATIONS FRAUD—MANUFACTURER—DEFINED

Under Minnesota law. whoever intentionally makes, assembles, or possesses a telecommunications device that is designed or adapted to

[1] assist another to obtain telecommunications service for that person's own use by fraudulent means and with intent to evade a lawful charge

[2] conceal from a (provider of telecommunication service) (lawful authority) the existence or place of origin or destination of a telecommunication service

is guilty of a crime.

COMMENT

M.S.A. § 609.893, subd. 2.

CRIMJIG 25.21

FACILITATION OF TELECOMMUNICATIONS FRAUD—MANUFACTURER—ELEMENTS

The elements of facilitation of telecommunications fraud are:

First, the defendant (made) (assembled) (possessed) a telecommunications device. A "telecommunications device" is an instrument, apparatus, equipment mechanism, operating procedure or code that is designed or adapted for a particular use, and that is intended or can be used to commit telecommunications and information services fraud,[1] or facilitate the commission of telecommunications and information services fraud. The term includes, but is not limited to, computer hardware, software, programs, electronic mail system, voice mail system, identification validation system, private branch exchange, or any other means of facilitating telecommunications service.

[1] Second, the telecommunications device was designed or adapted to allow a person to obtain telecommunications services for the person's own use by fraudulent means and with intent to evade a lawful charge.

[2] Second, the telecommunications device was designed or adapted to conceal from a provider of (telecommunications service) (or) (lawful authority) the existence or place of origin or destination of telecommunications service. A "telecommunications provider" is a person, firm, or association, or a corporation, private or municipal, owning, operating, or managing facilities used to provide telecommunications service. "Telecommunications service" means a service that, in exchange for pecuniary consideration, provides or offers to provide transmission of messages, signals, facsimiles, or other communication between persons who are physically separated from each other by telephone, telegraph, cable, wire, fiber optic cable, or the pro-

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25.21

[1] *See* CRIMJIGs 25.14 and 25.15 for the definition and elements of telecommunications and information services fraud.

jection of energy without physical connection. The definition applies when the telecommunications service originates or ends or both originates and ends in this state.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are):

[1] Was the value of the services obtained in excess of $2,500?

[2] Was the value of the services obtained more than $500, but not more than $2,500?

[3] Was the value of the services obtained $500 or less?

You will answer one of these questions "yes." If you have a reasonable doubt as to the value of the services obtained, you should answer "yes" to the lesser of the values you believe it had. [In determining the value of the services obtained under one scheme or course of conduct, you may aggregate the values of the services obtained.]

COMMENT

M.S.A. § 609.893, subd. 2(2).

CRIMJIG 25.22

CELLULAR TELEPHONE CRIMES—TERMS—DEFINITIONS

Cellular Telephone. "Cellular telephone" means a radio telecommunications device that may be used to obtain access to the public and cellular switch telephone networks, and that is programmed by the manufacturer with an electronic serial number.

Cellular Telephone Service. "Cellular telephone service" means all services and cellular telephone equipment and capabilities available from a provider to an end user for a fee.

Cloned Cellular Telephone or Counterfeit Cellular Telephone. "Cloned cellular telephone" or "counterfeit cellular telephone" means a cellular telephone, the electronic serial number of which has been altered by someone other than the manufacturer.

Electronic Serial Number. "Electronic serial number" means a unique number that is programmed into a cellular telephone by the manufacturer, transmitted by the cellular telephone, and used by cellular telephone providers to validate radio transmissions as having been made by an authorized device.

End User. "End user" is a person who pays a fee to subscribe to cellular telephone service from a provider, or a person receiving a call from or sending a call to the person paying or subscribing for cellular telephone service.

Intercept. "Intercept" means to electronically capture, record, reveal, or otherwise access the signals emitted or received during the operation of a cellular telephone by any instrument, device, or equipment without the consent of the sender or receiver.

Mobile Identification Number. "Mobile identification number" means the cellular telephone number assigned to the cellular telephone by the cellular telephone provider.

Provider. "Provider" means a licensed seller of cellular telephone service, or a reselling agent authorized by a licensed seller.

Telephone Cloning Paraphernalia. "Telephone cloning paraphernalia" means materials that, when possessed in combination, are capable of creating a cloned cellular telephone. Telephone cloning paraphernalia includes, but is not limited to: (1) scanners to intercept electronic serial numbers and mobile identification numbers; (2) cellular telephones; (3) cables; (4) EPROM chips, (5) EPROM burners, (6) software for programming the cellular telephone with a false electronic serial number, mobile identification number, other identifiable data, or a combination of those items; (7) computers containing software for programming the cellular telephone with a false electronic serial number, mobile identification number, other identifiable data, or a combination of those items; and (8) lists of electronic serial number and mobile identification number combinations.

COMMENT

These terms and definitions are taken from M.S.A. § 609.894, subd. 1. The court should include the appropriate definitions whenever the offense involves a cellular telephone crime.

CRIMJIG 25.23

CELLULAR TELEPHONE COUNTERFEITING—FIRST DEGREE—DEFINED

Under Minnesota law, whoever knowingly possess or distributes, and knows the unlawful nature of using, any telephone cloning paraphernalia or any instrument capable of intercepting or manipulating electronic serial numbers, mobile identification numbers, or other identifiable data, or a combination of those items, and agrees with, encourages, solicits, or permits one or more other persons to engage in or cause cellular counterfeiting, or obtain cellular telephone service through cellular counterfeiting, is guilty of a crime.

COMMENT

M.S.A. § 609.894, subd. 4.

CRIMJIG 25.24

CELLULAR TELEPHONE COUNTERFEITING—FIRST DEGREE—ELEMENTS

The elements of cellular telephone counterfeiting in the first degree are:

First, the defendant knowingly possessed or distributed any telephone cloning paraphernalia or any instrument capable of intercepting or manipulating electronic serial numbers, mobile identification numbers, or other identifiable data, or a combination of those items.

Second, the defendant knew the unlawful nature of using the paraphernalia or instrument.

Third, the defendant agreed with, encouraged, solicited, or permitted one or more other persons to engage in or cause cellular counterfeiting, or to obtain cellular telephone service through counterfeiting.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.894, subd. 4.

Definitions are found in M.S.A. § 609.894, subd. 1. *See also* CRIMJIG 25.22.

CRIMJIG 25.25

CELLULAR TELEPHONE COUNTERFEITING—SECOND DEGREE—DEFINED

Under Minnesota law, whoever knowingly possesses, and knows the unlawful nature of using, any telephone cloning paraphernalia or any instrument capable of intercepting or manipulating electronic serial numbers, mobile identification numbers, or other identifiable data, or a combination of those items, is guilty of a crime.

COMMENT

M.S.A. § 609.894, subd. 3.

CRIMJIG 25.26

CELLULAR TELEPHONE COUNTERFEITING—SECOND DEGREE—ELEMENTS

The elements of cellular telephone counterfeiting in the second degree are:

First, the defendant knowingly possessed or distributed any telephone cloning paraphernalia or any instrument capable of intercepting or manipulating electronic serial numbers, mobile identification numbers, or other identifiable data, or a combination of those items.

Second, the defendant knew the unlawful nature of using any telephone cloning paraphernalia or such instrument.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.894, subd. 3.

Definitions are found in M.S.A. § 609.894, subd. 1. *See also* CRIMJIG 25.22.

CRIMJIG 25.27

CELLULAR TELEPHONE COUNTERFEITING—THIRD DEGREE—DEFINED

The statutes of Minnesota provide that whoever knowingly possesses an unlawfully cloned cellular telephone is guilty of a crime.

COMMENT

M.S.A. § 609.894, subd. 2.

Definitions are found in M.S.A. § 609.894, subd. 1. *See also* CRIMJIG 25.22.

CRIMJIG 25.28

CELLULAR TELEPHONE COUNTERFEITING—THIRD DEGREE—ELEMENTS

The elements of cellular telephone counterfeiting are:

First, the defendant knowingly possessed a cloned cellular telephone.

Second, the defendant knew that the cellular telephone was unlawfully cloned.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.894, subd. 2.

Definitions are found in M.S.A. § 609.894, subd. 1. *See also* CRIMJIG 25.22.

CRIMJIG 25.29

CRIMINAL USE OF ENCRYPTION—DEFINED

Under Minnesota law whoever intentionally uses or attempts to use encryption to

[1] commit, further, or facilitate conduct constituting a crime.

[2] conceal the commission of a crime

[3] conceal the identity of a person who has committed any crime

[4] prevent, impede, delay, or disrupt the normal operation or use of another's computer, computer program, or computer system

is guilty of a crime.

COMMENT

M.S.A. § 609.8912

CRIMJIG 25.30

CRIMINAL USE OF ENCRYPTION—ELEMENTS

The elements of the crime are:

First, the defendant used or attempted to use encryption. "Encryption" means any protective or disruptive measure, including but not limited, cryptography, enciphering, or encoding that: (1) causes or makes any data, information, image, program, signal, or sound unintelligible or unusable; or (2) prevents, impedes, delays or disrupts access to any data, information, image, program, signal or sound.

[1] Second, the defendant (used) (or) (attempted to use) encryption to commit, further, or facilitate conduct constituting the crime of ________.

[Here insert the definition and elements of the underlying crime.]

[2] Second, the defendant (used) (or) (attempted to use) encryption to conceal the commission of the crime of ________.

[Here insert the definition and elements of the underlying crime.]

[3] Second the defendant (used) (or) (attempted to use) encryption to conceal the identity of a person who has committed any crime.

[4] Second, the defendant (used) (or) (attempted to use) encryption to prevent, impede, delay, or disrupt the normal operation or use of another's computer, computer program, or computer system

[Insert CRIMJIGs 5.01 and 5.02 on Attempt if appropriate.]

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been so proved, the defendant is not guilty.

CRIMJIG 25.31

FACILITATING ACCESS TO A COMPUTER SECURITY SYSTEM—DEFINED

Under Minnesota law, whoever facilitates access to a computer security network, knowing or having reason to know that the person is aiding another who intends to commit a crime and in fact commits a crime is guilty of a crime.

COMMENT

M.S.A. § 609.8913

CRIMJIG 25.32

FACILITATING ACCESS TO A COMPUTER SECURITY SYSTEM—ELEMENTS

The elements of the crime are:

First, the defendant facilitated access to a computer security network by another person. "Facilitating access" includes the intentional disclosure of a computer password, identifying code, personal information number, or other confidential about a computer security system which provides a person with the means or opportunity to commit a crime.

Second, the defendant (knew) (or) (had reason to know) that the other person is intends to commit a crime.

Third, the other person in fact committed (a crime) (the crime of ________).

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been so proved, the defendant is not guilty.

CRIMJIG 25.33

INTERFERING WITH INTERNET TICKET SALES—DEFINITION

Under Minnesota law, whoever intentionally uses or sells software to circumvent, on a ticket seller's Web site, a security measure, an access control system, or a control or measure that is used to ensure an equitable ticket buying process, is guilty of a crime.

COMMENT

M.S.A. § 609.806(a)

CRIMJIG 25.34

INTERFERING WITH INTERNET TICKET SALES—ELEMENTS

The elements of interfering with internet ticket sales are:

First, the defendant (used) (sold) software to circumvent (a security measure) (an access control system) (or) (a control or measure) used to ensure an equitable ticket buying process on a ticket seller's Web site. "Software" means computer programs that are primarily designed or produced for the purpose of interfering with the operation of any person or entity that sells, over the Internet, tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind.

Second, the defendant (used) (sold) the software with intent to circumvent (a security measure) (an access control system) (or) (a control or measure) used to ensure an equitable ticket buying process on a ticket seller's Web site.

Third, the defendant's acts took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CHAPTER 26

HAZARDOUS WASTES

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CRIMJIG

26.01 Hazardous Wastes—Unlawful Disposal—Defined

26.02 ——Elements

26.03 —Possess or Transport—Defined

26.04 ——Elements

26.05 Intentional Release of Harmful Substance—Defined

26.06 —Elements

CRIMJIG 26.01

HAZARDOUS WASTES—UNLAWFUL DISPOSAL—DEFINED

Under Minnesota law, whoever knowingly disposes of or abandons hazardous waste or arranges for the disposal of hazardous waste [at a location other than one authorized by the pollution control agency or the United States Environmental Protection Agency] [in violation of any material term of a hazardous waste facility permit] is guilty of a crime.

COMMENT

M.S.A. § 609.671, subd. 4.

In *State v. Gerring*, 418 N.W.2d 517 (Minn. App. 1988), and *State v. Normandale Properties, Inc.*, 420 N.W.2d 259 (Minn. App. 1988), the Court of Appeals rejected a claim that the statutory definition of "hazardous waste" was unconstitutionally vague.

CRIMJIG 26.02

HAZARDOUS WASTES—UNLAWFUL DISPOSAL—ELEMENTS

The elements of unlawful disposal of hazardous waste are:

First, the defendant (disposed of) (abandoned) (arranged for the disposal of) ________[1] at ________.[2]

[1] Second, ________ was not a location authorized by the (pollution control agency) (United States Environmental Agency) for the disposal of hazardous wastes.

[2] Second, the disposal was in violation of a material term or condition of a hazardous waste facility permit.

[1] Third, the defendant knew that the disposal was not authorized by the (pollution control agency) (the United States Environmental Protection Agency).

[2] Third, the defendant knew that the disposal was in violation of a material term or condition of a hazardous waste facility permit.

In determining whether or not the defendant knew of the violation, you are instructed that an act is committed knowingly if it is done voluntarily, and it is not the result of negligence, mistake, accident, or circumstances that are beyond the control of the defendant. To determine whether or not the defendant knew the nature of the defendant's act, you should look at the evidence of defendant's conduct, the defendant's familiarity with the subject matter in question, and from all of the facts and circumstances connected with the case. Knowledge may also be established by evidence that the defendant took affirmative steps to shield the defendant from relevant information. Proof of knowledge does not require that a defendant knew a particu-

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26.02

[1] Whether a substance is a hazardous waste should be determined by the court. *See* Minnesota Rule 7045.0135 for a listing of hazardous wastes.

[2] The disposal site.

lar act or failure to act was a violation of the law, or that the defendant had specific knowledge of the regulatory limits or testing procedures involved in a case. (Knowledge of a corporate official may also be established by proof that the person is a responsible corporate official. To be a "responsible corporate official," the defendant must be an official of the corporation and not merely an employee, and the defendant must have direct control of, or supervisory responsibility for, the activities related to the alleged violation. Proof alone that the defendant held a certain job or position in a corporation does not satisfy this requirement, and it must be proven that the defendant had information regarding the crime for which the defendant is charged that is such that it would lead a reasonable and prudent person in the defendant's position to learn the actual facts.) (Knowledge of a corporation may be established by showing that an illegal act was performed by an agent acting on behalf of the corporation within the scope of employment and in furtherance of the corporation's business interests, unless a high managerial person with direct supervisory authority over the agent demonstrated due diligence to prevent the commission of the crime.)

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See M.S.A. § 609.671, subd. 2, for a definition of knowing for purposes of this statute.

CRIMJIG 26.03

HAZARDOUS WASTES—POSSESS OR TRANSPORT—DEFINED

Under Minnesota law, whoever knowingly:

[1] delivers (________) (a hazardous waste) to any person other than a person who is authorized to receive the waste,

[2] treats or stores (________) (hazardous waste) without a permit when a permit is required or in violation of a material term of a condition of a permit,

[3] transports (________) (a hazardous waste) to any location other than a facility that is authorized to receive, treat, store, or dispose of the hazardous waste,

[4] transports (________) (hazardous waste) without a required manifest,

[5] transports (________) (hazardous waste) without a required license to transport,

is guilty of a crime.

COMMENT

M.S.A. § 609.671, subd. 5.

CRIMJIG 26.04

HAZARDOUS WASTES—POSSESS OR TRANSPORT—ELEMENTS

The elements of hazardous waste violation are:

[1] First, the defendant delivered ________[1] to a person other than a person authorized to receive the waste. Persons authorized to receive the hazardous waste are ________.[2]

[2] First, the defendant treated or stored ________[3] without a permit when a permit was required, or violated a material term or condition of a hazardous waste permit. [This element is not proven if the defendant notified (________) (the agency) prior to the time a permit would be required that the defendant would be treating or storing hazardous waste without a permit.] [This element is not proven if the defendant immediately notified (________) (the agency issuing the permit) of the circumstances of the violation as soon as the defendant became aware of the violation.]

[3] First, the defendant transported ________[4] to any location other than a facility that was authorized to receive, treat, or dispose of ________.

[4] First, the defendant transported ________[5] without the required manifest.

26.04

[1] Whether a substance is a hazardous waste should be determined by the court. *See* Minnesota Rule 7045.0135 for a listing of hazardous wastes.

[2] Authorized receivers under Minnesota Statutes or the United States Code.

[3] Whether a substance is a hazardous waste should be determined by the court. *See* Minnesota Rule 7045.0135 for a listing of hazardous wastes.

[4] Whether a substance is a hazardous waste should be determined by the court. *See* Minnesota Rule 7045.0135 for a listing of hazardous wastes.

[5] Whether a substance is a hazardous waste should be determined by the court. *See* Minnesota Rule 7045.0135 for a listing of hazardous wastes.

[5] First, the defendant transported ________[6] without the required transportation license.[7]

Second, the defendant knew of such actions. In determining whether or not the defendant knew of the violation, you are instructed that an act is committed knowingly if it is done voluntarily, and it is not the result of negligence, mistake, accident, or circumstances that are beyond the control of the defendant. To determine whether or not the defendant knew the nature of the defendant's act, you should look at the evidence of defendant's conduct, the defendant's familiarity with the subject matter in question, and from all of the facts and circumstances connected with the case. Knowledge may also be established by evidence that the defendant took affirmative steps to shield the defendant from relevant information. Proof of knowledge does not require that a defendant knew a particular act or failure to act was a violation of the law, or that the defendant had specific knowledge of the regulatory limits or testing procedures involved in a case. (Knowledge of a corporate official may also be established by proof that the person is a responsible corporate official. To be a "responsible corporate official," the defendant must be an official of the corporation and not merely an employee, and the defendant must have direct control of, or supervisory responsibility for, the activities related to the alleged violation. Proof alone that the defendant held a certain job or position in a corporation does not satisfy this requirement, and it must be proven that the defendant had information regarding the crime for which the defendant is charged that is such that it would lead a reasonable and prudent person in the defendant's position to learn the actual facts.) (Knowledge of a corporation may be established by showing that an illegal act was performed by an agent acting on behalf of the corporation within the scope of employment and in furtherance of the corporation's business interests, unless a high managerial person with direct supervisory authority over the agent demonstrated due diligence to prevent the commission of the crime.)

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[6] Whether a substance is a hazardous waste should be determined by the court. *See* Minnesota Rule 7045.0135 for a listing of hazardous wastes.

[7] *See* M.S.A. Chap. 116; Chap. 221; and rules promulgated thereunder.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.671, subds. 2 and 5.

CRIMJIG 26.05

INTENTIONAL RELEASE OF HARMFUL SUBSTANCE—DEFINED

Under Minnesota law, whoever intentionally exposes another or the other's property to an obnoxious or harmful gas, fluid, or substance, with intent to injure, molest, or coerce, is guilty of a crime.

COMMENT

M.S.A. § 624.732.

CRIMJIG 26.06

INTENTIONAL RELEASE OF HARMFUL SUBSTANCE—ELEMENTS

The elements of intentional release of harmful substance are:

First, the defendant exposed (________) (another) (property of ________) (property of another) to an obnoxious or harmful gas, fluid, or substance.

Second, the defendant intended to expose (________) (another) (________'s) property (another's property) to the obnoxious or harmful gas, fluid, or substance.

Third, the defendant acted with intent to injure, molest, or coerce (________) (another).

[Fourth, defendant knew that defendant's acts created a risk of (death) (or) (bodily harm) (serious property damage).]

[Fourth] [Fifth], the defendant's acts took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of a question on the verdict form. The question is: Did the defendant know that by doing so, the defendant created a risk of death, bodily harm, or serious property damage? You will answer the question "yes" or "no." If you have reasonable doubt as to the answer, you should answer the question "no."]

CHAPTER 27

ALCOHOL AND TOBACCO OFFENSES

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CRIMJIG 27.01

PURCHASE/POSSESSION/CONSUMPTION OF LIQUOR BY A PERSON UNDER THE AGE OF 21—DEFINED

Under Minnesota law, whoever

[1] is a person under the age of 21 years and enters (any premises licensed for the retail sale of alcoholic beverages) (any municipal liquor store) for the purpose of (purchasing) (having served or delivered to (him) (her)) an alcoholic beverage

[2] is a person under the age of 21 years and (purchases) (attempts to purchase) an alcoholic beverage

[3] is a person under the age of 21 years who claims to be 21 years old or older for the purpose of purchasing an alcoholic beverage

[4] is a person under the age of 21 years and has in possession an alcoholic beverage, with the intent to consume it at a place other than the household of (his) (her) (parent) (guardian)

[5] is a person under the age of 21 years and consumes an alcoholic beverage

is guilty of a crime.

COMMENT

M.S.A. § 340A.503, subd. 1. *See also* 260B.235 for enhanced juvenile penalties.

CRIMJIG 27.02

PURCHASE/POSSESSION/CONSUMPTION OF LIQUOR BY A PERSON UNDER THE AGE OF 21—ELEMENTS

The elements of underage alcohol violation are:

First, the defendant was a person under the age of 21 years.

Second, the defendant

[1] entered (premises licensed for the retail sale of alcoholic beverages) (a municipal liquor store).

[2] (purchased) (attempted to purchase) an alcoholic beverage.

[3] claimed to be 21 years old or older.

[4] had in possession an alcoholic beverage.

[5] consumed an alcoholic beverage. "Consumption" includes the ingestion of an alcoholic beverage and the physical condition of having ingested an alcoholic beverage.

Third, the defendant did so

[1] for the purpose of (purchasing) (having served or delivered to (him) (her)) an alcoholic beverage.

[3] for the purpose of purchasing an alcoholic beverage.

[4] with intent to consume the alcoholic beverage at a place other than the household of his or her (parent) (guardian).

[If you find the defendant possessed such intoxicating liquor or non-intoxicating malt liquor at a place other than the household of (his) (her) (parent) (guardian), you may infer the

defendant acted with intent to consume the same at a place other than the household of (his) (her) (parent) (guardian). However, you are not required to infer the defendant acted with such intent, and you should consider any other relevant evidence on this matter.]

Fourth, the defendant's act took place on (or about) ________ in ________ County.

[Fourth, the defendant's act took place on (or about) ________, or evidence of consumption was observed on (or about) ________ in ________ County.][1]

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Since these offenses are misdemeanors, no mens rea is required. The Committee notes, however, that the term "for the purpose of" is sufficient, under M.S.A. § 609.02, subd. 9(3) to meet any mens rea requirement, essentially equating the phrase "with intent to" to "has a purpose to do the thing."

In *State v. Abu-Shanab*, 448 N.W.2d 557 (Minn. App. 1989), the Court of Appeals held that consumption of alcohol by a minor was not a continuing offense, and, in order to sustain a conviction, the prosecution must establish the venue in which the alcohol was consumed. The statutes have since been amended to effectively overrule this decision.

27.02

[1] The bracketed instruction for the fourth element should be used in prosecutions under M.S.A. § 340A.503, subd. 1(a)(2)

CRIMJIG 27.03

PROVIDING LIQUOR TO PERSON UNDER THE AGE OF 21—DEFINED

Under Minnesota law, whoever sells, gives, barters, or furnishes an alcoholic beverage to any person under the age of 21 years is guilty of a crime.

COMMENT

M.S.A. § 340A.503, subd. 2(1).

CRIMJIG 27.04

PROVIDING LIQUOR TO PERSON UNDER THE AGE OF 21—ELEMENTS

The elements of providing an alcoholic beverage to a person under the age of 21 are:

First, the defendant (sold) (gave) (bartered) (furnished) an alcoholic beverage.

Second, the person to whom the defendant (sold) (gave) (bartered) (furnished) the alcoholic beverage was a person under the age of 21 years.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

In State v. Rohan, 834N.W.2d 223 (Minn. App. 2013), the Court of Appeals held that Minn. Stat. § 340A.502, subd. 2(1) is a strict-liability (public welfare) statute and therefore no intent requirement is to be read into the statute. Compare with *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012) on the general rules regarding intent.

In *State v. Wohsol, Inc.*, 670 N.W.2d 292 (Minn. App. 2003), the Court of Appeals addressed the issue of corporate liability for serving an underage patron alcohol on a corporate premises, when the corporation is a bar licensed to serve alcohol by the State. The *Wohlsol* court held that language in M.S.A. § 340A.503, subd. 1(a)(1), allowing conviction if a licensee "permit[s]" underage drinking on the licensed premises, requires that the prosecution show "knowledge of the violation such that the licensee authorized, tolerated or ratified sale of intoxicating liquor to minors . . ." *Id.* at 297.

CRIMJIG 27.05

PROVIDING LIQUOR TO OBVIOUSLY INTOXICATED PERSON—DEFINED

Under Minnesota law, whoever sells, gives, barters, furnishes, or in any way procures for another any alcoholic beverage to any obviously intoxicated person is guilty of a crime.

COMMENT

M.S.A. § 340A.502.

CRIMJIG 27.06

PROVIDING LIQUOR TO OBVIOUSLY INTOXICATED PERSON—ELEMENTS

The elements of providing an alcoholic beverage to an obviously intoxicated person are:

First, the defendant (sold) (gave) (bartered) (furnished) (or in any way procured for another) an alcoholic beverage.

Second, the person to whom the defendant (sold) (gave) (bartered) (furnished) the alcoholic beverage was an obviously intoxicated person.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 27.07

PERMITTING CONSUMPTION BY/PROCURING FOR/INDUCING 21 YEAR OLD—DEFINED

Under Minnesota law, whoever

[1] is a licensee, or employee of a licensee, and permits any person under the age of 21 years to consume alcoholic beverages on the licensed premises

[2] induces a person under the age of 21 years to purchase or procure an alcoholic beverage

[3] lends or knowingly permits the use of the person's (driver's license) (permit) (Minnesota identification card) (other form of identification) by a person under the age of 21 years for the purpose of purchasing or attempting to purchase an alcoholic beverage

is guilty of a crime.

COMMENT

M.S.A. § 340A.503, subd. 1(1) and subd. 2(1) and (3).

CRIMJIG 27.08

PERMITTING CONSUMPTION BY/PROCURING FOR/INDUCING 21 YEAR OLD—ELEMENTS

The elements of (permitting consumption by) (procuring for) (inducing) a 21 year old are:

[1] First, the defendant was a licensee or employee of a licensee.

Second, the defendant permitted a person under the age of 21 years to consume an alcoholic beverage on the licensed premises.

[2] First, the defendant induced a person under the age of 21 years to purchase or procure an alcoholic beverage.

[3] First, the defendant lent or knowingly permitted a person under 21 years of age to use the defendant's (driver's license) (permit) (Minnesota identification card) (other form of identification).

Second, the defendant knew the person intended to use the (driver's license) (permit) (Minnesota identification card) (other form of identification) for the purpose of purchasing or attempting to purchase an alcoholic beverage.

(Second) (Third), the defendant's act occurred on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 27.09

DEFENSE TO UNLAWFUL CONSUMPTION OF ALCOHOLIC BEVERAGES

The defendant has been charged with unlawful consumption of alcoholic beverages. It is a defense to this charge that the defendant consumed the alcoholic beverage in the household of the defendant's parent or guardian and with the consent of the parent or guardian. The defendant has the burden of proving this defense by the preponderance of the evidence. "Preponderance of the evidence" means that all the evidence produced must lead you to believe it is more likely that the claim is true than not true.

COMMENT

M.S.A. § 340A.503, subd. 1(2).

CRIMJIG 27.10

DEFENSE TO FURNISHING ALCOHOLIC BEVERAGE TO A PERSON UNDER 21 YEARS OLD

The defendant has been charged with (selling) (bartering) (furnishing) (giving) an alcoholic beverage(s) to a person under 21 years of age. It is a defense to this charge that the defendant is the parent or guardian of the person under 21 years of age, and that the defendant gave or furnished the alcoholic beverage to that person solely for consumption in the defendant's household. The defendant has the burden of proving this defense by the preponderance of the evidence. "Preponderance of the evidence" means that all the evidence produced must lead you to believe it is more likely that the claim is true than not true.

COMMENT

M.S.A. § 340A.503, subd. 2(1).

CRIMJIG 27.11

DEFENSE REGARDING INVESTIGATION OF STATUS OF PERSON TO WHOM LIQUOR IS FURNISHED

It is a defense in any criminal proceeding for the enforcement of the provisions related to the sale or furnishing of an alcoholic beverage to a person under the age of 21 that the defendant reasonably and in good faith relied upon representations made by the person under the age of 21 by presentation of a (valid driver's license issued by Minnesota, another state, or a province of Canada, and including the photograph and date of birth of the licensed person) (Minnesota identification card) (a valid Canadian identification card with the photograph and date of birth of the person, issued by a Canadian province) (in the case of a foreign national, a valid passport). The defendant has the burden of proving this defense by the preponderance of the evidence. "Preponderance of the evidence" means that all the evidence produced must lead you to believe it is more likely that the claim is true than not true.

COMMENT

M.S.A. § 340A.503, subd. 6.

CRIMJIG 27.12

SALE OF TOBACCO TO MINORS—DEFINED

Under Minnesota law, whoever (sells) (furnishes) tobacco to a person under the age of 18 years is guilty of a crime.

COMMENT

M.S.A. § 609.685, subd. 1a and subd. 2.

CRIMJIG 27.13

SALE OF TOBACCO TO MINORS—ELEMENTS

The elements of (selling) (furnishing) tobacco to minors are:

First, the defendant (sold) (furnished) tobacco to ________. The term "tobacco" means cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessary of a tobacco product, including, but not limited to, cigarettes, cigars, cheroots, stogies, perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or other tobacco related devices.

Second, at the time of the (sale) (furnishing), ________ was under 18 years of age.

[Third, the defendant has a previous conviction for this offense.]

[Third] [Fourth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

In State v. Rohan, 834N.W.2d 223 (Minn. App. 2013), the Court of Appeals held that Minn. Stat. § 340A.502, subd. 2(1), furnishing alcohol to a minor, is a strict-liability (public welfare) statute and therefore no intent requirement is to be read into the statute. Presumably, such a rationale would also apply to furnishing tobacco to a minor. Compare with *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012) on the general rules regarding intent.

CRIMJIG 27.14

SALE OF TOBACCO TO MINORS—DEFENSE

The defendant has been charged with (selling) (furnishing) (tobacco) (tobacco-related device) (electronic delivery device) to a minor. It is a defense to this charge that the defendant reasonably and in good faith relied upon representations made by the person under the age of 18 by presentation of a valid (driver's license) (identification card) (in the case of a foreign national, passport). The defendant has the burden of proving this defense by the preponderance of the evidence. "Preponderance of the evidence" means that all the evidence produced must lead you to believe it is more likely that the claim is true than not true.

COMMENT

M.S.A. § 609.685, subd. 1a(b).

CRIMJIG 27.15

PROVIDING TOBACCO RELATED DEVICE TO MINORS—DEFINED

Under Minnesota law, whoever (sells) (furnishes) a tobacco-related device to a person under the age of 18 is guilty of a crime.

COMMENT

M.S.A. § 609.685, subd. 1a and subd. 2.

CRIMJIG 27.16

PROVIDING TOBACCO RELATED DEVICE TO MINORS—ELEMENTS

The elements of (selling) (furnishing) a tobacco related device to minors are:

First, the defendant (sold) (furnished) a tobacco-related device to ______. A "tobacco-related device" means cigarette papers or a pipe for smoking or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of vapors of tobacco or tobacco related products. Tobacco-related devices include components of tobacco-related devices which may marketed or sold separately.

Second, at the time of the (sale) (furnishing), ______ was under 18 years of age.

[Third, the defendant has a previous conviction for this offense.]

[Third] [Fourth], the defendant's act took place on (or about) ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

In State v. Rohan, 834N.W.2d 223 (Minn. App. 2013), the Court of Appeals held that Minn. Stat. § 340A.502, subd. 2(1), furnishing alcohol to a minor, is a strict-liability (public welfare) statute and therefore no intent requirement is to be read into the statute. Presumably, such a rationale would also apply to furnishing tobacco-related devices to a minor. Compare with *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012) on the general rules regarding intent.

CRIMJIG 27.17

PROVIDING ELECTRONIC DELIVERY DEVICE TO MINORS—DEFINED

Under Minnesota law, whoever (sells) (furnishes) an electronic delivery device to a person under the age of 18 is guilty of a crime.

COMMENT

M.S.A. § 609.685, subd. 1a and subd. 2.

CRIMJIG 27.18

PROVIDING ELECTRONIC DELIVERY DEVICE TO MINORS—ELEMENTS

The elements of (selling) (furnishing) an electronic delivery device) to minors are:

First, the defendant (sold) (furnished) an electronic delivery device to ________. An "electronic delivery device" means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery system includes any component part of a product, whether or not marketed or sold separately. [Electronic delivery device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.]

Second, at the time of the (sale) (furnishing), ________ was under 18 years of age.

[Third, the defendant has a previous conviction for this offense.]

[Third] [Fourth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

In State v. Rohan, 834N.W.2d 223 (Minn. App. 2013), the Court of Appeals held that Minn. Stat. § 340A.502, subd. 2(1), furnishing alcohol to a minor, is a strict-liability (public welfare) statute and therefore no intent requirement is to be read into the statute. Presumably, such a rationale would also apply to furnishing an electronic delivery system to a minor. Compare with *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012) on the general rules regarding intent.

CRIMJIG 27.19

SALE OF TOXIC SUBSTANCES TO MINORS—DEFINED

Under Minnesota law, whoever sells a toxic substance to a person under the age of 18 is guilty of a crime.

COMMENT

M.S.A. § 609.684, subd. 2(a).

CRIMJIG 27.20

SALE OF TOXIC SUBSTANCES TO MINORS—ELEMENTS

The elements of sale of a toxic substance to a minor are:

First, the defendant sold a toxic substance to ________. A "toxic substance" means (glue, cement, or aerosol paint, containing toluene, benzene, xylene, amyl nitrate, butyl nitrate, nitrous oxide, or other aromatic hydrocarbon solvents, but does not include glue, cement, or paint contained in a packaged kit for the construction of a model automobile, airplane, or similar item) (butane or butane lighter) (any similar substance declared to be toxic to the central nervous system and to have a potential for abuse by a rule adopted by the commissioner of health).

Second, at the time of the sale, ________ was under 18 years of age.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 27.21

SALE OF TOXIC SUBSTANCE TO MINORS—AFFIRMATIVE DEFENSE

It is a defense in a criminal proceeding for sale of a toxic substance to a minor that the defendant reasonably and in good faith relied upon representations made by the person under the age of 18 by presentation of a (valid driver's license issued by Minnesota, another state, or a province of Canada, and including the photograph and date of birth of the licensed person) (Minnesota identification card) (a valid Canadian identification card with the photograph and date of birth of the person issued by a Canadian province) (in the case of a foreign national, a valid passport). The defendant has the burden of proving this defense by the preponderance of the evidence. "Preponderance of the evidence" means that all the evidence produced must lead you to believe it is more likely that the claim is true than not true.

COMMENT

M.S.A. § 609.684, subd. 2(b).

CHAPTER 28

GAME AND FISH VIOLATIONS

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CRIMJIG 28.01

AGRICULTURAL TRESPASS—DEFINED

Under Minnesota law, whoever enters upon the agricultural lands of another

[1] with the intent of hunting big or small game,

[2] intentionally for the purpose of pleasure driving,

including snowmobiling or operating any motorized vehicle,

without obtaining the permission of the owner, occupant, or lessee, is guilty of a crime.

COMMENT

M.S.A. § 97B.001, subd. 2.

CRIMJIG 28.02

AGRICULTURAL TRESPASS—ELEMENTS

The elements of agricultural trespass are:

First, the defendant entered upon the agricultural lands of another. "Agricultural lands" means lands containing plowed or tilled fields, or standing crops or their residues, or lands with a maintained fence for the purpose of enclosing domestic livestock.

Second, the defendant entered

[1] with the intent to hunt big or small game.

[2] intentionally for the purpose of pleasure driving, which may include snowmobiling or operating any motorized vehicle.

Third, the defendant acted without obtaining permission of the owner, occupant, or lessee.

Fourth, the defendant's act occurred on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

The definition of "agricultural lands" is found in M.S.A. § 97B.001, subd. 1.

Other provisions in this statute proscribe entering upon any land with intent to take any wild animals after being notified not to do so; failure to close a gate on the lands of another; taking a wild animal with a firearm without written permission of the landowner; and failure to properly post property. M.S.A. § 97B.001, subds. 3, 4, 7, and 8. Subdivision 5 of this section permits a hunter to retrieve, on foot, a wounded game animal from agricultural land of another, which is not posted, without permission of the land owner. This defense was upheld even though the landowner had orally notified hunters not to do so. *State v. Corbin*, 343 N.W.2d 874 (Minn. App. 1984).

In some cases, the jury may need to be instructed as to the definitions of "big game" and "small game," M.S.A. § 97A.015, subd. 3, and M.S.A. § 97A.015, subd. 45.

Ordinarily, "motorized vehicle" need not be defined, but in the event this becomes an issue, the statutory definition should be given from M.S.A. § 97A.015, subd. 32.

CRIMJIG 28.03

ILLEGAL MEANS OF TAKING FISH—DEFINED

Under Minnesota law, whoever takes fish by means of

[1] devices, chemicals, or substances that kill, stun, or affect the nervous system of fish,

[2] by means of nets, traps, trot lines, or snares,

[3] by any spring devices that impale, hook, or otherwise capture fish,

except as expressly authorized, is guilty of a crime.

COMMENT

M.S.A. § 97C.325.

CRIMJIG 28.04

ILLEGAL MEANS OF TAKING FISH—ELEMENTS

The elements of illegal means of taking fish are:

First, the defendant took fish by means of

[1] devices, chemicals, or substances[1] that kill, stun, or affect the nervous system of fish.

[2] nets, traps, trot lines, or snares.

[3] spring devices that impale, hook, or otherwise capture fish.

Second, the defendant acted without specific authority to do so.

Third, the defendant's act took place on (or about) ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

The State can establish a prima facie case of illegal fishing by proving the acts prohibited under the statute without negating the exceptions. *State v. Seeling*, 126 Minn. 386, 148 N.W. 458 (1914).

28.04

[1] The statute lists, without limitation, the following examples of "prohibited substances": explosives, drugs, poisons, lime, medicated bait, and fish berries.

CRIMJIG 28.05

ILLEGAL SHINING—DEFINED

Under Minnesota law, whoever, while having in possession, either individually or as one of a group of persons, any firearm, bow, or other implement that could be used to take big game, casts the rays of a spotlight, headlight, or other artificial light in any highway, in any field, woodland, or forest, for the purpose of spotting, locating, or taking an animal, is guilty of a crime.

COMMENT

M.S.A. § 97B.081.

M.S.A. § 97B.081, subd. 2(a) and M.S.A. § 97B.621, subd. 3, authorizes shining for raccoons; fox and coyotes may be hunted using a handheld light between January 1 and March 31.

CRIMJIG 28.06

ILLEGAL SHINING—ELEMENTS

The elements of (Shining) (Use of Artificial Lights to Spot, Locate or Take Wild Animals) are:

First, the defendant cast the rays of a spotlight, headlight, or other artificial light for the purposes of spotting, locating, or taking any wild animal.

Second, the defendant acted by casting the rays of a spotlight, headlight, or other artificial light (in a field, woodland or forest) (or) (on a highway into any field, woodland or forest).

Third, the defendant possessed, either individually or as one of a group of persons, a (firearm) (bow) (implement) that could be used to take big game.

Fourth, the defendant's act took place on or about ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 97B.621, subd. 3, authorizes shining for raccoons; fox and coyotes may be hunted using a handheld light between January 1 and March 31.

CRIMJIG 28.07

TAKING DEER WITHOUT A LICENSE—DEFINED

Under Minnesota law, whoever takes deer without a license is guilty of a crime.

COMMENT

M.S.A. § 97B.301, subd. 1. *See also* M.S.A. § 97B.401 (bear); M.S.A. § 97B.501 (moose); M.S.A. § 97B.601 (small game).

CRIMJIG 28.08

TAKING DEER WITHOUT A LICENSE—ELEMENTS

The elements of taking a deer without a license are:

First, the defendant took a deer. "To take" includes to pursue, shoot, kill, capture, trap, snare, spear or net or to attempt to do those things or assist another person in taking an animal.

[Insert CRIMJIGs 5.01 and 5.02 on Attempt if appropriate.]

COMMENT

M.S.A. § 97B.301, subd. 1. *See also* M.S.A. § 97B.401 (bear); M.S.A. § 97B.501 (moose); M.S.A. § 97B.601 (small game).

The definition of "take" is from M.S.A. § 97A.015, subd. 47. See State v. Schmid, __ N.W.2d.__ (Minn. 2015); *State v. O'Heron*, 250 Minn. 83, 83 N.W.2d 785 (1957). In *State v. Schmid*, supra, the Supreme Court held a jury could reasonably conclude that a person who sat in a camouflaged blind in a field during deer hunting season, wearing blaze orange, with a loaded gun next to him was "pursuing" or "attempting to take" deer.

CRIMJIG 28.09

DEER BAITING—DEFINED

Under Minnesota law, whoever hunts deer

[1] with aid or use of bait

[2] in the vicinity of bait, if the person knows or has reason to know that bait is present

[3] in the vicinity of where the person has placed bait or caused bait to be placed within the previous ten days

is guilty of a crime.

COMMENT

M.S.A. § 97B.328

CRIMJIG 28.10

DEER BAITING—ELEMENTS

The elements of deer baiting are:

[1] First, the defendant hunted deer.

Second, the defendant did so with aid or use of bait.

[2] First, the defendant hunted deer.

Second, the defendant did so in the vicinity of bait.

Third, the defendant knew or had reason to know that bait was present.

[3] First, the defendant hunted deer.

Second, the defendant did so in the vicinity of bait.

Third, the defendant placed bait or caused bait to be placed within the previous ten days in the vicinity.

(Third) (Fourth), the defendant's act was committed on (or about) ________ in ________ County.

If you find each of the elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 97B.328

CRIMJIG 28.11

TAKING WILD ANIMALS WHILE UNDER THE INFLUENCE—DEFINED

Under Minnesota law, whoever takes wild animals with a firearm or by archery when the person

[1] is under the influence of alcohol,

[2] is under the influence of a controlled substance,

[3] is under the influence of a combination of alcohol and a controlled substance,

[4] has an alcohol concentration of 0.08 or more,

[5] has an alcohol concentration of 0.08 or more as measured within two hours of the time of hunting,

[6] is knowingly under the influence of a hazardous substance that affects the nervous system, brain, or muscles so as to substantially impair the person's ability to operate a firearm or bow and arrow,

is guilty of a crime.

COMMENT

M.S.A. § 97B.065, subd. 1.

CRIMJIG 28.12

TAKING WILD ANIMALS WHILE UNDER THE INFLUENCE—ELEMENTS

The elements of taking wild animals while under the influence are:

First, the defendant took wild animals with a firearm or by archery. "To take" includes to pursue, shoot, kill, capture, trap, snare, spear or net or to attempt to do those things or assist another person in taking an animal.

[Insert CRIMJIGs 5.01 and 5.02 on Attempt if appropriate.]

Second,

[1] at the time the defendant took the wild animals, the defendant was under the influence of alcohol.

It is not unlawful to drink alcoholic beverages and then take wild animals. The prohibition is against taking wild animals with a firearm or by archery while under the influence of alcohol.

There is no set standard as to the quantity of alcohol a person must consume before being regarded as "under the influence of alcohol." When a person is so affected by an alcoholic beverage that the person does not possess that clearness of intellect and control of (himself) (herself) as (she) (he) otherwise would have, that person is under the influence of alcohol.

[2] at the time the defendant took the wild animals, the defendant was under the influence of a controlled substance. ________ is a controlled substance.

It is not unlawful to ingest a controlled substance and then take wild animals. The prohibition is against taking wild animals with a firearm or by archery while under the influence of a controlled substance.

> There is no set standard as to the quantity of a controlled substance a person must ingest before being regarded as "under the influence." When a person is so affected by a controlled substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (she) (he) otherwise would have, that person is under the influence of a controlled substance.

[3] at the time the defendant took the wild animals, the defendant was under the influence of a combination of alcohol and a controlled substance. (________ is a controlled substance).

> It is not unlawful to drink alcoholic beverages and ingest a controlled substance and then take wild animals. The prohibition is against taking wild animals with a firearm or by archery while under the influence of a combination of alcohol and a controlled substance.
>
> There is no set standard as to the quantity of alcohol and a controlled substance a person must ingest before the person is regarded as being "under the influence." When a person is so affected by the combination of an alcoholic beverage and a controlled substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (she) (he) otherwise would have, that person is under the influence.

[4] at the time the person took the wild animals, the defendant's alcohol concentration was 0.08 or more. The defendant took a (breath) (blood) (urine) test to determine alcohol concentration. The State has introduced evidence of the testing method used and the results of the test administered to the defendant. You must evaluate the reliability of the testing method and the test results in determining whether the defendant's alcohol concentration was 0.08 or more at the time the defendant was taking the wild animals.

[5] within two hours of the time the defendant took the wild animals, the defendant's alcohol concentration was

0.08 or more. The defendant took a (breath) (blood) (urine) test to determine alcohol concentration. The State has introduced evidence of the testing method used and the results of the test administered to the defendant. You must evaluate the reliability of the testing method and the test results in determining whether the defendant's alcohol concentration was 0.08 or more within two hours of the time of taking the wild animals.

[6] at the time the defendant took the wild animals, the defendant was knowingly under the influence of a hazardous substance[1] that affects the nervous system, brain, or muscles so as to substantially impair the person's ability to operate a firearm or bow and arrow.

[________ is a hazardous substance. The State must prove beyond a reasonable doubt that the substance in question was ________.]

It is not unlawful to ingest a hazardous substance and then take wild animals. The prohibition is against taking wild animals with a firearm or by archery while knowingly under the influence of a hazardous substance.

There is no set standard as to the quantity of a hazardous substance a person must ingest before the person is regarded as being "under the influence." When a person is so affected by a hazardous substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (she) (he) otherwise would have, the person is under the influence of a hazardous substance.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven be-

28.12

[1] M.S.A. § 609.21, subd. 5, defines a "hazardous substance" as any chemical or chemical compound that is listed as a hazardous substance in rules adopted under Chapter 182. Through a series of further references, one can find the list of hazardous substances at 49 C.F.R. § 172.101, Appendix A.

yond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

The definition of “take” is from M.S.A. § 97A.015, subd. 47. See State v. Schmid, __ N.W.2d.__ (Minn. 2015); *State v. O’Heron*, 250 Minn. 83, 83 N.W.2d 785 (1957).

In *State v. Ritter*, 486 N.W.2d 832 (Minn. App. 1992), the Court of Appeals held that conduct preparatory to hunting did not constitute attempting to take wild animals within the meaning of a statute that prohibited taking wild animals while under the influence of intoxicants.

CRIMJIG 28.13

MISTREATMENT OF ANIMAL—TORTURE, NEGLECT, INJURE, KILL—DEFINED

Under Minnesota law, whoever tortures, cruelly beats, neglects, or unjustifiably injures, maims, mutilates, or kills any animal, whether it belongs to that person or to another person, is guilty of a crime.

COMMENT

M.S.A. § 343.21, subd. 1.

CRIMJIG 28.14

MISTREATMENT OF ANIMAL—TORTURE, NEGLECT, INJURE, KILL—ELEMENTS

The elements of mistreatment of an animal are:

First, the defendant tortured, cruelly beat, neglected, or unjustifiably injured, maimed, mutilated, or killed any animal, whether it belonged to him or another person. ["Tortured" means every act, omission, or neglect which causes or permits unnecessary or unjustifiable pain, suffering, or death.]

[Second, the defendant has a prior (felony or gross misdemeanor) conviction for this offense.[1] [N.B. the conviction must be within five years of the time of this conviction.]]

[1] [Second] [Third], the defendant acted intentionally. "Intentionally" means that the actor either has a purpose to do the thing or cause the result specified, or believes that the act performed by the actor, if successful, will cause the result.

[Third] [Fourth], the defendant's acts resulted in substantial bodily harm to a (pet) (companion animal). "Pet or companion animal" includes any animal owned, possessed by, cared for, or controlled by a person for the present or future enjoyment of that person or another as a pet or companion, or any stray pet or stray companion animal. "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member

[Fourth] [Fifth], defendant acted to threaten, intimidate, or terrorize another person.]]

[2] [Second] [Third], the defendant acted intentionally. "Intentionally" means that the actor either has a purpose to do

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28.14

[1] Note that the defendant can stipulate to the prior conviction and remove this element from the jury's consideration. *See State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

the thing or cause the result specified, or believes that the act performed by the actor, if successful, will cause the result.

[Third] [Fourth], the defendant's acts resulted in death or great bodily harm to a (pet) (companion animal). "Pet or companion animal" includes any animal owned, possessed by, cared for, or controlled by a person for the present or future enjoyment of that person or another as a pet or companion, or any stray pet or stray companion animal. "Great bodily harm" means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

[[Fourth] [Fifth], defendant acted to threaten, intimidate, or terrorize another person.]]

[Second] [Fifth] [Sixth], the defendant's act took place on or about ________, in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See M.S.A. § 343.20, subd. 3, for definition of "torture."

CRIMJIG 28.15

MISTREATMENT OF ANIMAL—CRUELTY—DEFINED

Under Minnesota law, whoever willfully instigates or in any way furthers any act of cruelty to any animal or animals, or any act tending to produce cruelty to animals, is guilty of a crime.

COMMENT

M.S.A. § 343.21, subd. 7.

CRIMJIG 28.16

MISTREATMENT OF ANIMAL—CRUELTY—ELEMENTS

The elements of mistreatment of an animal — cruelty are:

First, the defendant willfully instigated or in any way furthered any act of cruelty to any animal or animals, or any act tending to produce cruelty to animals. "Cruelty" means every act, omission, or neglect which causes or permits unnecessary or unjustifiable pain, suffering, or death.

[Second, the defendant has a prior (felony or gross misdemeanor) conviction for this offense.[1] [N.B. the conviction must be within five years of the time of this conviction.]]

[1] [Second] [Third], the defendant acted intentionally. "Intentionally" means that the actor either has a purpose to do the thing or cause the result specified, or believes that the act performed by the actor, if successful, will cause the result.

[Third] [Fourth], the defendant's acts resulted in substantial bodily harm to a (pet) (companion animal). "Pet or companion animal" includes any animal owned, possessed by, cared for, or controlled by a person for the present or future enjoyment of that person or another as a pet or companion, or any stray pet or stray companion animal. "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member

[Fourth] [Fifth], defendant acted to threaten, intimidate, or terrorize another person.]]

[2] [Second] [Third], the defendant acted intentionally. "Intentionally" means that the actor either has a purpose to do

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28.16

[1] Note that the defendant can stipulate to the prior conviction and remove this element from the jury's consideration. *See State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

the thing or cause the result specified, or believes that the act performed by the actor, if successful, will cause the result.

[Third] [Fourth], the defendant's acts resulted in death or great bodily harm to a (pet) (companion animal). "Pet or companion animal" includes any animal owned, possessed by, cared for, or controlled by a person for the present or future enjoyment of that person or another as a pet or companion, or any stray pet or stray companion animal. "Great bodily harm" means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

[[Fourth] [Fifth], defendant acted to threaten, intimidate, or terrorize another person.]]

[Second] [Fifth] [Sixth], the defendant's act took place on or about ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See M.S.A. § 343.20, subd. 3, for definition of "torture."

CRIMJIG 28.17

ANIMAL FIGHTING—ADMISSION TO ANIMAL FIGHT—DEFINITION

Under Minnesota law, whoever purchases a ticket of admission or otherwise gains admission to the activity of (cockfighting) (dogfighting) (or) (violent pitting of one pet or companion animal against another of the same or a different kind) is guilty of a crime.

COMMENT

M.S.A. § 343.31, subd. 1(b).

CRIMJIG 28.18

ANIMAL FIGHTING—ADMISSION TO ANIMAL FIGHT—ELEMENTS

The elements of admission to an animal fight are:

First, the defendant (purchased a ticket of admission) (gained admission) to the activity of (cockfighting) (dogfighting) (or) (violent pitting of one pet or companion animal against another of the same or a different kind). "Pet" or "companion animal" means a nonhuman mammal, bird, or reptile impounded or held for breeding, or possessed by, cared for, or controlled by a person for the present or future enjoyment of that person or another.

Second, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 28.19

ANIMAL FIGHTING—PROMOTION; RECEIPT OF MONEY; PERMIT ENTRY; TRAIN OR POSSESS ANIMAL—DEFINITION

The statutes of Minnesota provide that whoever intentionally

[1] promotes, engages in, or is employed in the activity of (cockfighting) (dogfighting) (or) (violent pitting of one pet or companion animal against another of the same or a different kind)

[2] receives money for the admission of a person to a place used, or about to be used, for (cockfighting) (dogfighting) (or) (violent pitting of one pet or companion animal against another of the same or a different kind)

[3] permits a person to enter or use for (cockfighting) (dogfighting) (or) (violent pitting of one pet or companion animal against another of the same or a different kind) premises of which the permitter is the owner, agent, or occupant

[4] uses, trains, or possesses a dog or other animal for the purpose of participating in, engaging in, or promoting (cockfighting) (dogfighting) (or) (violent pitting of one pet or companion animal against another of the same or a different kind)

is guilty of a crime.

COMMENT

M.S.A. § 343.31, subd. 1(a).

CRIMJIG 28.20

ANIMAL FIGHTING—PROMOTION; RECEIPT OF MONEY; PERMIT ENTRY; TRAIN OR POSSESS ANIMAL—ELEMENTS

The elements of the crime of animal fighting are:

[1] First, the defendant (promoted) (engaged in) (or) (was employed in the activity of) (cockfighting) (dogfighting) (violent pitting of one pet or companion animal) against another of the same or a different kind). "Pet" or "companion animal" means a nonhuman mammal, bird, or reptile impounded or held for breeding, or possessed by, cared for, or controlled by a person for the present or future enjoyment of that person or another.

[2] First, the defendant received money for the admission of a person to a place used, or about to be used, for (cockfighting) (dogfighting) (violent pitting of one pet or companion animal) against another of the same or a different kind).

[3] First, the defendant permitted a person to enter or use for (cockfighting) (dogfighting) (violent pitting of one pet or companion animal) against another of the same or a different kind) certain premises.

Second, the defendant was the owner, agent, or occupant of those premises.

[4] First, the defendant (used) (trained) (or) (possessed) a dog or other animal for the purpose of participating in, engaging in, or promoting (cockfighting) (dogfighting) (violent pitting of one pet or companion animal) against another of the same or a different kind).

(Second) (Third), the defendant acted intentionally. "Intentionally" means that the actor either has a purpose to do the thing or cause the result specified, or believes that the act performed by the actor, if successful, will cause the result. In addition, the actor must have knowledge of those facts that are necessary to make the actor's conduct criminal and that are set forth after the word "intentionally."

(Third) (Fourth), the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CHAPTER 29

TRAFFIC

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CRIMJIG 29.01

DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL—DEFINED

Under Minnesota law, whoever (drives) (operates) (is in physical control of) a motor vehicle, when the person is under the influence of alcohol, is guilty of a crime.

[This statute applies to, but is not limited to, any person who drives, operates, or is in physical control of any motor vehicle on the ice of any lake, stream, or river, including, but not limited to, the ice of any boundary water.]

COMMENT

M.S.A. § 169A.20, subd. 1(1).

In *State v. Berge*, 464 N.W.2d 595 (Minn. App. 1991), *aff'd*, 474 N.W.2d 828 (Minn. 1991), the Court of Appeals held the Minnesota constitutional protection against self-incrimination does not prevent admission of evidence at trial of the defendant's refusal to submit to an alcohol test. The Court found there was no authority in decisions of the

Minnesota Supreme Court for the proposition that the Minnesota Constitution is broader in its protection against compelled self-incrimination than the United States Constitution.

CRIMJIG 29.02

DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL—ELEMENTS

The elements of (driving) (operating) (being in physical control of) a motor vehicle while under the influence of alcohol are:

First, the defendant (drove) (operated) (was in physical control of) a motor vehicle. [A person "drives" a motor vehicle when the person exercises physical control over the speed and direction of a motor vehicle while it is in motion.] [A person "operates" a motor vehicle when the person manipulates or activates any of the controls of a motor vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a motor vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a motor vehicle.]

Second, at the time the defendant was (driving) (operating) (in physical control of) a motor vehicle, the defendant was under the influence of alcohol.

It is not unlawful to drink alcoholic beverages and then (drive) (operate) (be in physical control of) a motor vehicle. The prohibition is against (driving) (operating) (being in physical control of) a motor vehicle while under the influence of alcohol.

There is no set standard as to the quantity of alcohol a person must consume before a person is regarded as being "under the influence of alcohol." When a person is so affected by an alcoholic beverage that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is under the influence of alcohol.

If a person consumes an alcoholic beverage and is not influenced by the alcoholic beverage, there is no violation of the statute. However, if, as a result of consuming an alcoholic bever-

age, the person's ability or capacity to (drive) (operate) (be in physical control of) a motor vehicle is impaired, then the statute has been violated.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Only rarely will it be necessary to define "motor vehicle." Where the issue does arise, the statutory definition in M.S.A. § 169.011, subd. 42, should suffice. In most cases, it will not be necessary to define the term "drive," since it is a word of common understanding. Where the defendant has been charged with "operating" or being in "physical control," it may be necessary to define these terms for the jury. The bracketed definitions in the first element are intended to be read only where the trial court concludes a definition is necessary.

In *State v. Kieley*, 413 N.W.2d 886 (Minn. App. 1987), the Court of Appeals held that evidence could be introduced that established the defendant's blood alcohol level readings from deficient samples from a breath test, provided that sufficient foundation was established to prove that the defendant's blood alcohol level was at least as high as the level shown in the test. While the evidence would not be sufficient to sustain a conviction under M.S.A. § 169.121, subd. 1(d), it was admissible evidence in a prosecution under subd. 1(a).

Neither M.S.A. § 169.121 nor Minnesota case law specifically defines the term "drive." Judicial interpretations from other jurisdictions focus on the driver's exercise of control over the speed and direction of a vehicle in motion. *Underwood v. State*, 132 So. 606 (Ala. 1931); *Ferguson v. State*, 23 So.2d 687 (Miss.1945); *State v. Graves*, 237 S.E.2d 584 (S.C. 1977); *County of Milwaukee v. Proegler*, 291 N.W.2d 608 (Wis. 1980). In order to fall within the proscription of most statutes, the motorist must have actually driven, but the driving conduct can be proven circumstantially. *State v. Pieschke*, 295 N.W.2d 580 (Minn.1980).

In *State v. Cormican*, 292 Minn. 505, 195 N.W.2d 586 (1972), and *State v. Harris*, 295 Minn. 38, 202 N.W.2d 878 (1972), the Supreme Court considered what conduct constitutes operating a motor vehicle while under the influence of alcohol.

The Supreme Court has not specifically defined "physical control," but has commented on the remedial nature of the statute and has noted that the phrase "physical control" was intended to encompass the broadest possible range of conduct. *Department of Public Safety v. Juncewski*, 308 N.W.2d 316 (Minn. 1981).

The question arises as to whether or not the keys must be in the ignition for there to be "physical control." Although there is authority that the location of the keys is not dispositive, *Berns v. Commissioner of Public Safety*, 355 N.W.2d 493 (Minn. App. 1984), the total circumstances, including the location of the vehicle at the time it is found as well as its point of final destination, are significant factors in determining physical control. *State v. Pazderski*, 352 N.W.2d 85 (Minn. App. 1984); *Kozak v. Commissioner of Public Safety*, 359 N.W.2d 625 (Minn. App. 1984).

In *State v. Duemke*, 352 N.W.2d 427 (Minn. App. 1984), the Court of Appeals approved the following definition of physical control: "The phrase 'physical control' means being in a position to exercise dominion or control over the vehicle. Thus, a person [is] in physical control of a vehicle if he has the means to initiate any movement of that vehicle and he is in close proximity to the operating controls of the vehicle, and this is true whether the vehicle can be driven upon the highway at that point or not." *Id.* at 432.

The phrase "under the influence" of alcohol has been interpreted on several occasions by the Supreme Court. A person is "under the influence" of alcohol when the person does not "possess that clearness of intellect and control of himself that he otherwise would have." *State v. Graham*, 176 Minn. 164, 222 N.W. 909 (1929). "Driving while under the influence of alcohol" has been held to include the act of "driving a motor vehicle while ability or capacity to drive is impaired by alcohol." *Anderson v. Dept. of Public Safety*, 305 N.W.2d 786 (Minn. 1981); *State v. Stark*, 363 N.W.2d 53 (Minn. 1985). The focus is upon impaired ability or capacity to drive, rather than actual impaired driving conduct. *State v. Duemke, supra*. The State is not required to establish the impairment of gross motor and dexterity skills in order to prove a person is under the influence. *State v. Decker*, 371 N.W.2d 256 (Minn. App. 1985).

In both *State v. Stark*, supra, and *State v. Duemke*, *supra*, the Supreme Court and the Court of Appeals affirmed convictions that were based upon a lengthier "under the influence" instruction commonly used by Minnesota trial courts. In both cases, however, the Courts found use of the term "to the slightest extent" to be misleading. Thus, any additional or alternative instruction drawn from these cases should be amended accordingly. In *Stark*, the Court recommended substituting the term "to some degree."

In those cases where the defendant has consumed alcohol by means of cough syrup, mouthwash, or medication, it may be preferable to delete the word "beverage" from the instruction.

In *State v. Starfield*, 481 N.W.2d 834 (Minn. 1992), the Supreme Court reversed the Court of Appeals decision at 472 N.W.2d 143 (Minn. App. 1991). The Supreme Court held that the State does not have to prove operability of a motor vehicle for a defendant to be convicted of being in "physical control" of a motor vehicle while under the influence of alcohol, and held that intent to operate the motor vehicle is not an element of the crime. The Court held that in cases involving a disabled motor vehicle, a supplementary jury instruction along the following lines may be appropriate:

> In considering whether or not the defendant was in physical control of the motor vehicle while under the influence of alcohol, you may consider the defendant's location in or by the vehicle, the location of the ignition keys, whether the defendant had been a passenger in the vehicle before it came to rest, who owned the vehicle, the extent to which the vehicle was inoperable, and whether the vehicle if inoperable might have been rendered operable so as to be a danger to persons or property. You may consider these as well as any other facts or circumstances bearing on whether or not the defendant was then in physical control of a motor vehicle which was or reasonably could become a danger to persons or property while the defendant was under the influence of alcohol.

In *State v. Shepard*, 481 N.W.2d 560 (Minn. 1992), the Supreme Court held that in a prosecution for driving under the influence of alcohol, the State does not need to establish the driver had a blood alcohol concentration of .10 or more at the time of driving and, therefore, was not required to present expert testimony that, based upon a backward-looking extrapolation, the motorist's blood alcohol concentration at the time of driving conduct was .10 or more.

CRIMJIG 29.03

DRIVING WHILE UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE—DEFINED

Under Minnesota law, whoever (drives) (operates) (is in physical control of) a motor vehicle, when the person is under the influence of a controlled substance, is guilty of a crime. [This statute applies to, but is not limited to, any person who drives, operates, or is in physical control of a motor vehicle upon the ice of any lake, stream, or river, including, but not limited to, the ice of any boundary water.]

COMMENT

M.S.A. § 169A.20, subd. 1(2).

CRIMJIG 29.04

DRIVING WHILE UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE—ELEMENTS

The elements of (driving) (operating) (being in physical control) while under the influence of a controlled substance are:

First, the defendant (drove) (operated) (was in physical control of) a motor vehicle. [A person "drives" a motor vehicle when the person exercises physical control over the speed and direction of a motor vehicle while it is in motion.] [A person "operates" a motor vehicle when the person manipulates or activates any of the controls of a motor vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a motor vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a motor vehicle.]

Second, at the time the defendant was (driving) (operating) (in physical control of) a motor vehicle, the defendant was under the influence of a controlled substance. ________ is a controlled substance. [As part of this element of the offense, the State must prove beyond a reasonable doubt that the substance in question was, in fact, ________.]

The prohibition is against (driving) (operating) (being in physical control of) a motor vehicle while under the influence of a controlled substance.

There is no set standard as to the quantity of a controlled substance a person must ingest before a person is regarded as being "under the influence." When a person is so affected by a controlled substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is under the influence of a controlled substance.

If, as a result of consuming a controlled substance, the person's ability or capacity to (drive) (operate) (be in physical

control of) a motor vehicle is impaired, the statute has been violated.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [Insert element number], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See the Comment to CRIMJIG 29.02 regarding discussion and authorities for the definitions used in this instruction.

M.S.A. § 152.02 lists the schedules of controlled substances in Minnesota. Therefore, the jury is told in the second element that the drug in question falls within the statutory definition of a controlled substance, since this is a matter of statutory interpretation, rather than a question of fact for the jury. The State must prove beyond a reasonable doubt the actual identity of the substance in question. *State v. Dick*, 253 N.W.2d 277 (Minn. 1977); *State v. Vail*, 274 N.W.2d 127 (Minn. 1979).

CRIMJIG 29.05

DRIVING WHILE UNDER THE INFLUENCE—PRESENCE OF CONTROLLED SUBSTANCE—DEFINED

Under Minnesota law, whoever (drives) (operates) (is in physical control of a motor vehicle) when the person's body contains any amount of (a controlled substance) (________[1]), is guilty of a crime. [This statute applies to, but is not limited to, any person who drives, operates, or is in physical control of a motor vehicle upon the ice of any lake, stream, or river, including, but not limited to, the ice of any boundary water.]

COMMENT

M.S.A. § 169A.20, subd. 1(7).

29.05

[1] A controlled substance listed as Schedule I or II, other than marijuana or tetrahydrocannabinols.

CRIMJIG 29.06

DRIVING WHILE UNDER THE INFLUENCE—PRESENCE OF CONTROLLED SUBSTANCE—ELEMENTS

The elements of [driving] [operating] [being in physical control] while under the influence of a controlled substance are:

First, the defendant [drove] [operated] [was in physical control] of a motor vehicle. [A person "drives" a motor vehicle when the person exercises physical control over the speed and direction of a motor vehicle while it is in motion.] [A person "operates" a motor vehicle when the person manipulates or activates any of the controls of a motor vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a motor vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a motor vehicle.]

Second, at the time the defendant was [driving] [operating] [in physical control] of the motor vehicle, the defendant's body contained any amount of ________.[1] It is not necessary for the State to prove that the defendant was under the influence of a controlled substance.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find

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29.06

[1] A controlled substance listed as Schedule I or II, other than marijuana or tetrahydrocannabinols.

that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.07

DRIVING WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR A HAZARDOUS SUBSTANCE—DEFINED

Under Minnesota law, whoever (drives) (operates) (is in physical control of) a motor vehicle, when the person is under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (a hazardous substance that affects the nervous system, brain, or muscles), is guilty of a crime. [This statute applies to, but is not limited in application to, any person who drives, operates, or is in physical control of any motor vehicle upon the ice of any lake, stream, or river, including, but not limited to, the ice of any boundary water.]

COMMENT

M.S.A. § 169A.20, subd. 1(4).

CRIMJIG 29.08

DRIVING WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR HAZARDOUS SUBSTANCE—ELEMENTS

The elements of (driving) (operating) (being in physical control of) a motor vehicle while under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (a hazardous substance[1]) are:

First, the defendant (drove) (operated) (was in physical control of) a motor vehicle. [A person "drives" a motor vehicle when the person exercises physical control over the speed and direction of a motor vehicle while it is in motion.] [A person "operates" a motor vehicle when the person manipulates or activates any of the controls of a motor vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a motor vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a motor vehicle.]

Second, at the time the defendant was (driving) (operating) (in physical control of) a motor vehicle, the defendant was under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (a hazardous substance[2] that affects the nervous system, brain, or muscles). (________ is a controlled substance) (and) (________ is a hazardous substance).[3]

It is not unlawful to (drink alcoholic beverages) (or) (ingest

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29.08

[1] M.S.A. § 609.21, subd. 5, defines a "hazardous substance" as any chemical or chemical compound that is listed as a hazardous substance in rules adopted under Chapter 182. Through a series of further references, one can find the list of hazardous substances at 49 C.F.R. § 172.101, Appendix A.

[2] M.S.A. § 609.21, subd. 5, defines a "hazardous substance" as any chemical or chemical compound that is listed as a hazardous substance in rules adopted under Chapter 182. Through a series of further references, one can find the list of hazardous substances at 49 C.F.R. § 172.101, Appendix A.

[3] Whether a substance is a con-

a controlled substance) (or) (ingest a hazardous substance) and then (drive) (operate) (be in physical control of) a motor vehicle. The prohibition is against (driving) (operating) (being in physical control of) a motor vehicle while under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (a hazardous substance).

There is no set standard as to the quantity of (alcohol) (and) (a controlled substance) (and) (a hazardous substance) a person must ingest before a person is regarded as being "under the influence." When a person is so affected by the combination of (an alcoholic beverage) (and) (a controlled substance) (and) (a hazardous substance) that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."

If a person (consumes an alcoholic beverage) (and) (ingests a controlled substance) (and) (ingests a hazardous substance) and is not influenced by the (alcoholic beverage) (and) (controlled substance) (and) (hazardous substance), there is no violation of the statute. If, however, as a result of (consuming an alcoholic beverage) (and) (a controlled substance) (and) (a hazardous substance) the person's ability or capacity to (drive) (operate) (be in physical control of) a motor vehicle is impaired, the statute has been violated.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

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trolled substance or a hazardous substance is to be determined by the court.

CRIMJIG 29.09

DRIVING WITH AN ALCOHOL CONCENTRATION OF 0.08 OR MORE—DEFINED

Under Minnesota law, whoever (drives) (operates) (is in physical control of) a motor vehicle, when the person's alcohol concentration is 0.08 or more, is guilty of a crime. [This statute applies to, but is not limited to, any person who drives, operates, or is in physical control of a motor vehicle upon the ice of any lake, stream, or river, including, but not limited to, the ice of any boundary water.]

COMMENT

M.S.A. § 169A.20, subd. 1(5).

CRIMJIG 29.10

DRIVING WITH AN ALCOHOL CONCENTRATION OF 0.08 OR MORE—ELEMENTS

The elements of (driving) (operating) (being in physical control) with an alcohol concentration of 0.08 or more are:

First, the defendant (drove) (operated) (was in physical control of) a motor vehicle. [A person "drives" a motor vehicle when the person exercises physical control over the speed and direction of a motor vehicle while it is in motion.] [A person "operates" a motor vehicle when the person manipulates or activates any of the controls of a motor vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a motor vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a motor vehicle.]

Second, at the time the defendant was (driving) (operating) (in physical control of) a motor vehicle, the defendant's alcohol concentration was 0.08 or more. The defendant took a (breath) (blood) (urine) test to determine alcohol concentration. The State has introduced evidence of the testing method used and the results of the test that was administered to the defendant. You must evaluate the reliability of the testing method and the test results in determining whether the defendant's alcohol concentration was 0.08 or more at the time the defendant was (driving) (operating) (in physical control of) the motor vehicle.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven be-

yond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

In proving the reliability of the test method and test result, the state does not need to introduce expert testimony as to the test method in addition to the Intoxilyzer result. The jury, in *State v. Birk*, 687 N.W.2d 634 (Minn. App. 2004), was presented with sufficient circumstantial evidence from which it could infer that the method and the results were reliable.

Although the reliability of the testing method and results is a foundational question to be decided by the court in determining admissibility, see *City of St. Louis Park v. Quinn*, 289 Minn. 184, 182 N.W.2d 843 (1971), *State v. Dille*, 258 N.W.2d 565 (Minn.1977), once admitted into evidence, the reliability of the test is also an issue for the jury in determining the weight to be given to the evidence.

In *State v. Horning*, 535 N.W.2d 296 (Minn. 1995), the Supreme Court held in a prosecution for driving with an alcohol concentration of 0.10 or more that evidence of the defendant's lack of impairment was not relevant to the charged violation.

CRIMJIG 29.11

DRIVING WITH AN ALCOHOL CONCENTRATION OF 0.08 OR MORE AS MEASURED WITHIN TWO HOURS OF THE TIME OF DRIVING, OPERATING, BEING IN PHYSICAL CONTROL—DEFINED

Under Minnesota law, whoever (drives) (operates) (is in physical control of) a motor vehicle, when the person's alcohol concentration, as measured within two hours of the time of (driving) (operating) (being in physical control) is 0.08 or more, is guilty of a crime. [This statute applies to, but is not limited to, any person who drives, operates, or is in physical control of a motor vehicle upon the ice of any lake, stream, or river, including, but not limited to, the ice of any boundary water.]

COMMENT

M.S.A. § 169A.20, subd. 1(5).

CRIMJIG 29.12

DRIVING WITH AN ALCOHOL CONCENTRATION OF 0.08 OR MORE AS MEASURED WITHIN TWO HOURS OF THE TIME OF DRIVING—ELEMENTS

The elements of (driving) (operating) (being in physical control) with an alcohol concentration of 0.08 or more, as measured within two hours of the time of (driving) (operating) (being in physical control), are:

First, the defendant (drove) (operated) (was in physical control of) a motor vehicle. [A person "drives" a motor vehicle when the person exercises physical control over the speed and direction of a motor vehicle while it is in motion.] [A person "operates" a motor vehicle when the person manipulates or activates any of the controls of a motor vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a motor vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a motor vehicle.]

Second, within two hours of the time the defendant (drove) (operated) (was in physical control of) a motor vehicle, the defendant's alcohol concentration was 0.08 or more. The defendant took a (breath) (blood) (urine) test to determine alcohol concentration. The State has introduced evidence of the testing method used and the results of the test that was administered to the defendant. You must evaluate the reliability of the testing method and the test results in determining whether the defendant's alcohol concentration was 0.08 or more within two hours of the time of driving.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.13

DRIVING WHILE UNDER THE INFLUENCE OF A HAZARDOUS SUBSTANCE—DEFINED

Under Minnesota law, whoever (drives) (operates) (is in physical control of) a motor vehicle, when the person is knowingly under the influence of a hazardous substance that affects the nervous system, brain, or muscles, so as to substantially impair the person's ability to (operate) (be in physical control of) the motor vehicle is guilty of a crime. [This statute applies to, but is not limited to, any person who drives, operates, or is in physical control of a motor vehicle upon the ice of any lake, stream, or river, including, but not limited to, the ice of any boundary water.]

COMMENT

M.S.A. § 169A.20, subd. 1(3).

CRIMJIG 29.14

DRIVING WHILE UNDER THE INFLUENCE OF A HAZARDOUS SUBSTANCE—ELEMENTS

The elements of (driving) (operating) (being in physical control of) a motor vehicle while under the influence of a hazardous substance are:

First, the defendant (drove) (operated) (was in physical control of) a motor vehicle. [A person "drives" a motor vehicle when the person exercises physical control over the speed and direction of a motor vehicle while it is in motion.] [A person "operates" a motor vehicle when the person manipulates or activates any of the controls of a motor vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a motor vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a motor vehicle.]

Second, at the time the defendant was (driving) (operating) (in physical control of) a motor vehicle, the defendant was knowingly under the influence of a hazardous substance[1] that affects the nervous system, brain, or muscles. ________ is a hazardous substance. [As part of this element of the offense, the State must prove beyond a reasonable doubt that the substance was, in fact, ________.]

Third, the defendant was substantially impaired in (his) (her) ability to [(drive) (operate) (be in physical control of)] a motor vehicle due to the influence of a hazardous substance.

It is not unlawful to ingest hazardous substances and then (drive) (operate) (be in physical control of) a motor vehicle. The

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29.14

[1] M.S.A. § 609.21, subd. 5, defines a "hazardous substance" as any chemical or chemical compound that is listed as a hazardous substance in rules adopted under Chapter 152. Through a series of further references, one can find the list of hazardous substances at 49 C.F.R. § 172.101, Appendix A.

prohibition is against (driving) (operating) (being in physical control of) a motor vehicle while knowingly under the influence of a hazardous substance.

There is no set standard as to the quantity of a hazardous substance a person must consume before a person is regarded as being "under the influence". When a person is so affected by a hazardous substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is under the influence of a hazardous substance.

If a person ingests a hazardous substance and is not influenced by the hazardous substance, there is no violation of the statute. If, however, as a result of ingesting a hazardous substance the person's ability or capacity to (drive) (operate) (be in physical control of) a motor vehicle is impaired, then the statute has been violated.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Fourth] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Unlike the other DWI statutes, a crime is committed under this provision only if the defendant "knowingly" becomes under the influence.

The question of whether or not the substance is a hazardous substance should be determined by the court.

CRIMJIG 29.15

DRIVING WITH AN ALCOHOL CONCENTRATION OF 0.08 OR MORE AS MEASURED WITHIN TWO HOURS OF THE TIME OF DRIVING—AFFIRMATIVE DEFENSE

The defendant is not guilty of violating this statute if you are convinced, by a preponderance of the evidence, that the defendant consumed a sufficient quantity of alcohol after the time of actual (driving) (operating) (physical control) of a motor vehicle and before the administration of the evidentiary test to cause the alcohol concentration to exceed (0.08) (0.20).

By the term "preponderance of the evidence," it is meant that all of the evidence produced must lead you to believe it is more likely that the claim is true than not true. Therefore, if you find it is more likely true than not true that the defendant's alcohol concentration exceeded (0.08) (0.20) as a result of alcohol consumed after the time of (driving) (operating) (being in physical control of) a motor vehicle, the defendant (is not guilty of this offense) (has not aggravated this offense). If you are not so convinced, the defense has not been proven, and if the State has proven each element of the offense beyond a reasonable doubt, the defendant is guilty.

COMMENT

M.S.A. § 169A.46, subd. 1.

The statute provides that evidence of alcohol consumption between the time of driving and the time of chemical testing may not be admitted unless notice is given to the prosecution prior to the omnibus or pretrial hearing.

This instruction should be given only where there is evidence supporting it. Since the statute places the burden of persuasion regarding the affirmative defense upon the defendant, it is recommended that the trial judge advise defense counsel prior to trial that introduction of such evidence will necessitate giving an instruction pursuant to the statute.

Although the burden of proof in a criminal case remains at all times upon the State to prove the defendant's guilt beyond a reasonable doubt, the burden of going forward with the evidence as well as the burden of persuasion may devolve upon the defendant in asserting an affirmative defense. *State v. Carpenter*, 282 N.W.2d 910 (Minn. 1979); *State v. Currie*, 267 Minn. 294, 126 N.W.2d 389 (1964); *Patterson v. New York*, 432 U.S. 197, 97 S. Ct. 2319, 53 L.Ed.2d 281 (1977).

CRIMJIG 29.16

DRIVING A COMMERCIAL VEHICLE WITH AN ALCOHOL CONCENTRATION OF 0.04 OR MORE—DEFINED

Under Minnesota law, whoever (drives) (operates) (is in physical control of) a commercial motor vehicle, when the person's alcohol concentration is 0.04 or more, is guilty of a crime. [This statute applies to any person who drives, operates, or is in physical control of a commercial motor vehicle upon the ice of any lake, stream, or river, including, but not limited to, the ice of any boundary water.]

COMMENT

M.S.A. § 169A.20, subd. 1(6); M.S.A. § 169.011, subd. 16.

CRIMJIG 29.17

DRIVING A COMMERCIAL VEHICLE WITH AN ALCOHOL CONCENTRATION OF 0.04 OR MORE—ELEMENTS

The elements of (driving) (operating) (being in physical control) of a commercial motor vehicle with an alcohol concentration of 0.04 or more are:

First, the defendant (drove) (operated) (was in physical control of) a commercial motor vehicle.

A "commercial motor vehicle" is a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle (has a gross vehicle weight of 26,001 or more pounds) (has a towed unit with a gross vehicle weight of more than 10,000 pounds) (is a bus) (is used in the transportation of hazardous materials).[1] [A commercial motor vehicle does not include a (farm truck) (firefighter equipment) (recreational equipment being operated by a person under ________).][2] [A person "drives" a commercial motor vehicle when the person exercises physical control over the speed and direction of a commercial motor vehicle while it is in motion.] [A person "operates" a commercial motor vehicle when the person manipulates or activates any of the controls of a motor vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a commercial motor vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a commercial motor vehicle.]

Second, at the time the defendant was (driving) (operating) (in physical control of) a commercial motor vehicle, the defendant's alcohol concentration was 0.04 or more. The defendant took a (breath) (blood) (urine) test to determine alcohol concentration. The State has introduced evidence of the testing

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29.17

[1] *See* M.S.A. § 221.033

[2] M.S.A. § 171.02, subd. 2(a).

method used and the results of the test that was administered to the defendant. You must evaluate the reliability of the testing method and the test results in determining whether the defendant's alcohol concentration was 0.04 or more at the time the defendant was (driving) (operating) (in physical control of) a commercial motor vehicle.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Although the reliability of the testing method and results is a foundational question to be decided by the court in determining admissibility, see *City of St. Louis Park v. Quinn*, 289 Minn. 184, 182 N.W.2d 843 (1971), *State v. Dille*, 258 N.W.2d 565 (Minn.1977), once admitted into evidence, the reliability of the test is also an issue for the jury in determining the weight to be given to the evidence.

CRIMJIG 29.18

DRIVING A COMMERCIAL MOTOR VEHICLE WITH AN ALCOHOL CONCENTRATION OF 0.04 OR MORE AS MEASURED WITHIN TWO HOURS OF THE TIME OF DRIVING—DEFINED

The statutes of Minnesota provide that whoever (drives) (operates) (is in physical control of) a commercial motor vehicle, when the person's alcohol concentration as measured within two hours of the time of driving is 0.04 or more, is guilty of a crime. [This statute applies to any person who drives, operates, or is in physical control of a commercial motor vehicle upon the ice of any lake, stream, or river, including, but not limited to, the ice of any boundary water.]

COMMENT

M.S.A. § 169A.20, subd. 1(6).

CRIMJIG 29.19

DRIVING A COMMERCIAL MOTOR VEHICLE WITH AN ALCOHOL CONCENTRATION OF 0.04 OR MORE AS MEASURED WITHIN TWO HOURS OF THE TIME OF DRIVING—ELEMENTS

The elements of (driving) (operating) (being in physical control) of a commercial motor vehicle with an alcohol concentration of 0.04 or more as measured within two hours of the time of (driving) (operating) (being in physical control) are:

First, the defendant (drove) (operated) (was in physical control of) a commercial motor vehicle. A "commercial motor vehicle" is a vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle (has a gross vehicle weight of 26,001 or more pounds) (has a towed unit with a gross vehicle weight of more than 10,000 pounds) (is a bus) (is used in the transportation of hazardous materials).[1] A commercial motor vehicle does not include a (farm truck) (firefighter equipment) (recreational equipment being operated by a person under ________).[2] [A person "drives" a commercial motor vehicle when the person exercises physical control over the speed and direction of a commercial motor vehicle while it is in motion.] [A person "operates" a motor vehicle when the person manipulates or activates any of the controls of a commercial motor vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a commercial motor vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a commercial motor vehicle.]

Second, within two hours of the time the defendant (drove) (operated) (was in physical control of) a commercial motor vehicle, the defendant's alcohol concentration was 0.04 or more. The defendant took a (breath) (blood) (urine) test to determine

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29.19

[1] *See* M.S.A. § 171.02, subd. 2(a).

[2] *See* M.S.A. § 221.033.

alcohol concentration. The State has introduced evidence of the testing method used and the results of the test that was administered to the defendant. You must evaluate the reliability of the testing method and the test results in determining whether the defendant's alcohol concentration was 0.04 or more within two hours of the time of driving.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

In State v. Banken, 690 N.W.2d 367 (Minn. App. 2004), the Court of Appeals held that M.S.A. § 169A.20, subd. 1(5), allowed the use of a breath test sample obtained more than two hours after driving to measure and determine that a driver's alcohol concentration exceeded the legal limit within two hours of driving, relying on State v. Gebeck, 635 N.W.2d 385 (Minn. App. 2001), a vehicular homicide case. It should be noted that the measure was taken two hours and fourteen minutes after arrest and appellant admitted that he had not consumed additional alcohol while in custody.

In proving the reliability of the test method and test result, the state does not need to introduce expert testimony as to the test method in addition to the Intoxilyzer result. The jury, in State v. Birk, 687 N.W.2d 634 (Minn. App. 2004), was presented with sufficient circumstantial evidence from which it could infer that the method and the results were reliable.

CRIMJIG 29.20

DRIVING UNDER THE INFLUENCE— AGGRAVATING FACTORS

First degree:

[1] [Insert element number], the defendant had a previous felony conviction[1] for criminal vehicular homicide or injury. [See M.S.A. § 609.2112–.2114. See M.S.A. § 609.21 for offenses prior to August, 2014.]

or

[1] [Insert element number], the defendant had a previous felony conviction[2] for driving while impaired.

or

[3] [Insert element number], the defendant had the first of three or more qualified prior impaired driving incident(s) within ten years immediately preceding the current offense. [A "qualified prior impaired driving incident" includes prior driving impaired convictions and prior impaired driving-related loss of license including [here list the particular offense(s) listed M.S.A. § 169A.03, subds. 3, 20, 21, and 22 that apply to the case.[3]] [N.B. Under M.S.A. § 169A.95 each qualified prior impaired driving incident within ten years immediately preceding the current offense is counted as a separate aggravating factor. Note also that either a prior impaired driving conviction or a prior impaired driving-related loss of license based upon the same course of conduct may be considered, but not both. M.S.A. § 169A.09.]

29.20

[1] The defendant may stipulate to the prior conviction and remove that element from the jury's consideration. See *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

[2] The defendant may stipulate to the prior conviction and remove that element from the jury's consideration. See *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

[3] See M.S.A. 169A.03, subds. 3, 20, 21, and 22 for more complete definitions if necessary.

Second degree:

[1] [Insert element number], the defendant had two or more aggravating factors present when the offense was committed. The aggravating factors were:

[2] [Insert element number], the defendant refused to submit to a (chemical) (blood) (breath) (urine) test and had one aggravating factor present: The aggravating factor was:

[A] The defendant had (a) qualified prior impaired driving incident(s) within ten years immediately preceding the current offense. [A "qualified prior impaired driving incident" includes prior driving impaired convictions and prior impaired driving-related loss of license including [here list the particular offense(s) listed M.S.A. § 169A.03, subds. 3, 20, 21, and 22 that apply to the case.[4]] [N.B. Under M.S.A. § 169A.95 each qualified prior impaired driving incident within ten years immediately preceding the current offense is counted as a separate aggravating factor. Note also that either a prior impaired driving conviction or a prior impaired driving-related loss of license based upon the same course of conduct may be considered, but not both. M.S.A. § 169A.09.]

[B] The defendant had an alcohol concentration of 0.16 or more as measured at the time, or within two hours of the time, of the offense.

[C] A child under 16 years of age was in the vehicle at the time of the violation and the child was more than 36 months younger than the defendant.]

Third degree:

[Insert element number], the defendant had one aggravating factor present. The aggravating factor was:

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[4] See M.S.A. 169A.03, subds. 3, 20, 21, and 22 for more complete definitions if necessary.

[A] The defendant had a qualified prior impaired driving incident within ten years immediately preceding the current offense. [A "qualified prior impaired driving incident" includes prior driving impaired convictions and prior impaired driving-related loss of license including [here list the particular offense(s) listed M.S.A. § 169A.03, subds. 3, 20, 21, and 22 that apply to the case.[5]] [N.B. Under M.S.A. § 169A.95 each qualified prior impaired driving incident within ten years immediately preceding the current offense is counted as a separate aggravating factor. Note also that either a prior impaired driving conviction or a prior impaired driving-related loss of license based upon the same course of conduct may be considered, but not both. M.S.A. § 169A.09.]

[B] The defendant had an alcohol concentration of 0.16 or more as measured at the time, or within two hours of the time, of the offense.

[C] A child under 16 years of age was in the vehicle at the time of the violation and the child more than 36 months younger than the defendant.]

All offenses:

You must all agree on which particular incident(s) prove(s) the defendant committed a particular aggravating factor. If you do not all agree a particular incident has been proven, you may not find that incident to be an aggravating factor.

COMMENT

M.S.A. § 169A.03, subd. 3, 20, 21, and 22. These instructions should be inserted where aggravating factors apply. Note that under M.S.A. § 169A.95 each qualified prior impaired driving incident within ten years immediately preceding the current offense is counted as a separate aggravating factor. Note also that either a prior impaired driving conviction or a prior impaired driving-related loss of license based upon the same course of conduct may be considered, but not both. M.S.A.

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[5] See M.S.A. 169A.03, subds. 3, 20, 21, and 22 for more complete definitions if necessary.

§ 169A.09.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

CRIMJIG 29.21

REFUSAL TO SUBMIT TO TESTING—DEFINED

Under Minnesota law, whoever refuses to submit to a chemical test of the person's (blood) (breath) (urine) under the implied consent law is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 2; M.S.A. § 169A.51; M.S.A. § 169A.52.

CRIMJIG 29.22

REFUSAL TO SUBMIT TO TESTING—ELEMENTS

The elements of refusal to submit to testing are:

The elements of refusal to submit to testing are:

First, a peace officer had probable cause to believe that the defendant drove, operated, or was in physical control of a motor vehicle while under the influence of alcohol. In order to find that the officer had "probable cause," you must first look at the totality of the circumstances leading to the stop, based upon the objective facts and circumstances testified to by the arresting officer, as well as the officer's training and experience. If you find those circumstances would lead a reasonable officer to have an honest and strong suspicion that the defendant was driving, operating, or in physical control of a motor vehicle while under the influence of alcohol, then the arresting officer had probable cause.

[Second, the defendant refused to take a screening test (also called a preliminary screening or preliminary breath test). This test is administered to aid the officer in deciding whether an arrest should be made.]

[Second, the defendant took a screening test (also called a preliminary screening or preliminary breath test) and the results indicated an alcohol concentration of 0.08 or more.]

[Second, the peace officer placed the defendant under lawful arrest for driving while impaired. An arrest is "lawful" when the officer has reason to believe the defendant is in violation of the law and the officer can explain the reason.]

[Second, the defendant was involved in a motor vehicle accident or collision resulting in (property damage) (personal injury (to the defendant or to another)) (death).]

Third, the defendant was given the implied consent advisory by the peace officer.

Fourth, the defendant was requested by a peace officer to submit to a chemical test of the defendant's (blood) (breath) (urine).

Fifth, the defendant refused to submit to the test. [A failure to complete the entire test is a refusal. (In the case of a breath test, the entire test must consist of one adequate breath sample analysis, one calibration standard analysis, and a second adequate breath sample analysis.)]

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Sixth] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 169A.20, subd. 2; M.S.A. § 169A.51; M.S.A. § 169A.52.

CRIMJIG 29.23

OPEN BOTTLE—DEFINED

Under Minnesota law, whoever

[1] drinks or consumes intoxicating liquor or 3.2 percent malt liquor in any vehicle when such vehicle is upon a public highway,

[2] has in possession, while in a private motor vehicle upon a public highway, a bottle or receptacle containing intoxicating liquor or 3.2 percent malt liquor that has been opened, has had its seal broken, or has had its contents partially removed,

[3] is the owner of a private motor vehicle or the driver, if the owner is not present in the motor vehicle, and keeps or allows to be kept in a motor vehicle when such vehicle is upon the public highway any bottle or receptacle containing intoxicating liquor or 3.2 percent malt liquor that has been opened, has had its seal broken, or has had its contents partially removed, except when such bottle or receptacle shall be kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk,

is guilty of a crime.

COMMENT

M.S.A. § 169A.35, subds. 2, 3, and 4.

CRIMJIG 29.24

OPEN BOTTLE—ELEMENTS

The elements of open bottle are:

[1] First, the defendant drank or consumed (intoxicating liquor) (3.2 percent malt liquor).

Second, the defendant was in a motor vehicle at the time.

Third, the motor vehicle was upon a public highway. (The term "highway" means the entire width between boundary lines of any way or place when any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular traffic).

[2] First, the defendant had in possession a bottle or receptacle containing (intoxicating liquor) (3.2 percent malt liquor). "Possession" means either that the defendant had actual possession of the bottle or receptacle or consciously exercised dominion and control over the bottle or receptacle. This element is not proven if the bottle or receptacle is in the trunk of the vehicle, if it is equipped with a trunk, or in another area of the vehicle not normally occupied by the driver and passengers, if the vehicle is not equipped with a trunk. [However, a utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.]

Second, the defendant was in a private motor vehicle at the time.

Third, the motor vehicle was upon a public highway. (The term "highway" means the entire width between boundary lines of any way or place when any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular traffic).

[3] First, the defendant was (the owner of a private motor vehicle) (the driver of a private motor vehicle when the owner was not present in the vehicle).

Second, the defendant (kept) (allowed to be kept) in the vehicle a bottle or receptacle containing intoxicating liquor or 3.2 percent malt liquor. [This means that the defendant knew the (bottle) (receptacle) was in the vehicle.]

Third, the motor vehicle was upon a public highway. (The term "highway" means the entire width between boundary lines of any way or place when any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular traffic).

Fourth, the bottle or receptacle was opened, or the seal broken, or the contents partially removed.

[Fourth] [Fifth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 169A.35, subds. 2, 3, and 4. The definition of "motor vehicle" is now found in M.S.A. § 169A.03, subd. 15, but does not include motorboats in operation or off-road recreational vehicles as used in this section. M.S.A. § 169A.35, subd. 1.

In *State v. Loge*, 608 N.W.2d 152 (Minn. 2000), the Supreme Court held that, in the case of a driver who was the sole occupant of a motor vehicle on a public highway, the State did not need to prove that the driver knew of the existence of the open bottle. In such case, the bracketed language of the instruction should be removed.

CRIMJIG 29.25

RECKLESS DRIVING—DEFINED

Under Minnesota law, whoever drives a motor vehicle while aware of and consciously disregarding a substantial and unjustifiable risk that the driving may result in harm to another or another's property [and defendant's driving causes death or great bodily harm to another] is guilty of reckless driving.

[This statute applies to, but is not limited to, any person who drives any vehicle (upon the ice of any lake, stream, or river, including, but not limited to, the ice of any boundary water) (in a parking lot ordinarily used by or available to the public, though not as a matter of right, and a driveway connecting such a parking lot with the street or highway.)]

COMMENT

M.S.A. § 169.13, subds. 1 and 3.

CRIMJIG 29.26

RECKLESS DRIVING—ELEMENTS

The elements of reckless driving are:

First, the defendant was the driver of a motor vehicle.

Second, the defendant was aware of and consciously disregarding a substantial and unjustifiable risk that the driving would result in harm to another or another's property. The risk must be of such nature and degree that disregard of it constitutes a significant deviation from the standard of conduct that a reasonable person would observe in the same situation.

[Third, defendant's driving caused (death) (great bodily harm) to ____ (another). "Great bodily harm" means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.]

[Third] [Fourth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

The statute prohibits the reckless driving of a "vehicle," rather than a "motor vehicle". M.S.A. § 169.011, subd. 92, defines "vehicle."

The definition included in the second element is taken from *State v. Bolsinger*, 221 Minn. 154, 21 N.W.2d 480 (1946). *See also State v. Meany*, 262 Minn. 491, 115 N.W.2d 247 (1962).

CRIMJIG 29.27

CARELESS DRIVING—DEFINED

Under Minnesota law, whoever (operates) (halts) any vehicle (upon any street or highway) carelessly or heedlessly in disregard of the rights of others, or in a manner that endangers or is likely to endanger any property or any person, including the driver or passengers of the vehicle, is guilty of a crime. [This statute applies to, but is not limited to, any person who (operates) (halts) a vehicle (upon the ice of any lake, stream, or river, including, but not limited to, the ice of any boundary area) (in a parking lot ordinarily used by or available to the public, though not as a matter of right, and a driveway connecting such a parking lot with a street or highway.)]

COMMENT

M.S.A. § 169.13, subds. 2, 3.

CRIMJIG 29.28

CARELESS DRIVING—ELEMENTS

The elements of careless driving are:

First, the defendant (operated) (halted) a vehicle [(upon a street or highway) (upon the ice of any lake, stream, or river), (in a parking lot ordinarily used by or available to the public or a driveway connecting such a parking lot with a street or highway)].

Second, the defendant (drove) (halted) the vehicle carelessly or heedlessly in disregard of the rights of others, or in a manner that endangered or was likely to endanger property or a person, including the driver (or any passenger). [That is to say, that the defendant was negligent in the operation of the vehicle. The defendant was negligent if the defendant failed to use such care as a reasonable person would use under similar circumstances.]

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

If the meaning of the term "operate" is at issue, see the definition found in CRIMJIG 29.02 and the related Comment. The statute refers to a "vehicle," rather than a "motor vehicle." M.S.A. § 169.01, subd. 2, defines vehicle. Street or highway is defined in M.S.A. § 169.01, subd. 29.

The jury is advised in the bracketed portion of the second element that careless driving is synonymous with ordinary negligence. *State v. Dille*, 258 N.W.2d 565 (Minn. 1977); *State v. Tereau*, 304 Minn. 71, 229 N.W.2d 27 (1975); *State v. Meany*, 262 Minn. 491, 115 N.W.2d 247 (1962); *Matter of the Welfare of M.B.W.*, 364 N.W.2d 491 (Minn. App. 1985). Although negligence is the proper standard in determining whether the driving conduct constitutes careless driving, reading of the bracketed portion is left to the discretion of the trial court.

CRIMJIG 29.29

DRIVING AFTER CANCELLATION, SUSPENSION, REVOCATION—DEFINED

Under Minnesota law, whoever has a driver's license or driving privilege that has been (canceled) (suspended) (revoked), has been given a notice of, or reasonably should know of, the (cancellation) (suspension) (revocation), and disobeys such order by operating a motor vehicle, the operation of which requires a driver's license, while such license or privilege is (canceled) (suspended) (revoked), is guilty of a crime.

COMMENT

M.S.A. § 171.24, subds. 1, 2, and 3.

CRIMJIG 29.30

DRIVING AFTER CANCELLATION, SUSPENSION, REVOCATION—ELEMENTS

The elements of driving after [cancellation] [suspension] [revocation] are:

First, the defendant operated a motor vehicle.

Second, the motor vehicle operation was one that required a driver's license. The State does not have to prove the defendant operated the motor vehicle on a street or highway.

Third, the defendant's [license] [privilege] was [canceled] [suspended] [revoked] at the time the defendant was operating the motor vehicle.

Fourth, the defendant had been given notice of the (cancellation) (suspension) (revocation), or reasonably should have known of it. [Notice of revocation is sufficient if personally served, or if mailed by first class mail to the person's last known address or to the address listed on the person's driver's license. Notice is also sufficient if the person was informed that (cancellation) (suspension) (revocation) would be imposed upon a condition occurring or failing to occur, and the condition has in fact occurred or failed to occur. It is not a defense that a person failed to file a change of address with the post office, or failed to notify the Department of Public Safety of a change of name or address as required by law.]

[Fifth, the defendant's driver's license or driving privileges were cancelled on the grounds that the Commissioner of Public Safety determined the defendant's operation of a motor vehicle on the highways would be inimical to the public safety or welfare.[1]]

29.30

[1] If the defendant stipulates to this element, the bracketed portion of the instruction should not be used. See *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

[Fifth] [Sixth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

The bracketed fifth element should be used only if the defendant is charged with the violation of M.S.A. § 171.24, subd. 5, which makes it a gross misdemeanor to drive after revocation or cancellation if the grounds for revocation or cancellation are based on a determination that the driver operating a vehicle on the highways would be inimical to public safety or welfare. If the defendant stipulates to this element, the bracketed portion of the instruction should not be used. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

In *State v. Larson*, 502 N.W.2d 60 (Minn. App. 1993), reversed on other grounds, 503 N.W.2d 779 (Minn. 1993), the Court of Appeals approved this instruction (then CRIMJIG 29.25) as an accurate statement of the essential elements of the offense of driving after revocation.

In *State v. Bauman*, 552 N.W.2d 576 (Minn. App. 1996), the Court of Appeals held that the State need not prove the defendant operated the motor vehicle on a street or highway. The Court held use of this phrase in the statute described the motor vehicle, rather than the place of its operation.

CRIMJIG 29.31

DRIVING AFTER DISQUALIFICATION—DEFINED

Under Minnesota law, whoever has been disqualified from holding a commercial driver's license or has been denied the privilege to operate a commercial motor vehicle, has been given a notice of, or reasonably should know of, the disqualification, and disobeys such order by operating a commercial motor vehicle while disqualified to hold such license or privilege, is guilty of a crime.

COMMENT

M.S.A. § 171.24, subd. 4 and 5.

CRIMJIG 29.32

DRIVING AFTER DISQUALIFICATION—ELEMENTS

The elements of driving after disqualification are:

First, the defendant operated a commercial motor vehicle. A "commercial motor vehicle" is ________.[1]

Second, the defendant was disqualified from holding a commercial driver's license or had been denied the privilege to operate a commercial motor vehicle at the time the defendant was operating the commercial motor vehicle.

Third, the defendant had been given notice of the disqualification, or reasonably should have known of it. [Notice of disqualification is sufficient if personally served, or if mailed by first class mail to the person's last known address or to the address listed on the person's driver's license. Notice is also sufficient if the person was informed that disqualification would be imposed upon a condition occurring or failing to occur, and the condition has in fact occurred or failed to occur. It is not a defense that a person failed to file a change of address with the post office, or failed to notify the Department of Public Safety of a change of name or address as required by law.]

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

29.32

[1] The specific violation charged.

CRIMJIG 29.33

DRIVING AFTER CANCELLATION—GROSS MISDEMEANOR—DEFINED

Under Minnesota law, any person whose driver's license or driving privilege has been canceled or denied on the grounds that the Commissioner of Public Safety determined that the person's operation of a motor vehicle on the highway would be inimical to public safety or welfare, has been given a notice of, or reasonably should know of, the cancellation, and disobeys such order by operating any motor vehicle, the operation of which requires a driver's license, while such license or privilege is canceled or denied, is guilty of a crime.

COMMENT

M.S.A. § 171.24, subd. 5.

CRIMJIG 29.34

DRIVING AFTER CANCELLATION—GROSS MISDEMEANOR—ELEMENTS

The elements of driving after cancellation are:

First, the defendant operated a motor vehicle.

Second, the operation of the motor vehicle required a driver's license. The statutes of Minnesota require a driver's license for the operation of any motor vehicle upon any street or highway within the state. ["Highway" is defined as the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public as a matter of right, for purposes of vehicular traffic.]

Third, the defendant's (license) (privilege) was canceled at the time the defendant was operating the motor vehicle.

Fourth, the defendant had been given notice of the cancellation, or reasonably should have known of it. [Notice of cancellation is sufficient if personally served, or if mailed by first class mail to the person's last known address or to the address listed on the person's driver's license. Notice is also sufficient if the person was informed that cancellation would be imposed upon a condition occurring or failing to occur, and the condition has in fact occurred or failed to occur. It is not a defense that a person failed to file a change of address with the post office, or failed to notify the Department of Public Safety of a change of name or address as required by law.]

[Fifth, the defendant's driver's license or driving privileges were cancelled on the grounds that the Commissioner of Public Safety determined the defendant's operation of a motor vehicle on the highways would be inimical to the public safety or welfare.[1]]

29.34

[1] If the defendant stipulates to this element, the bracketed portion of the instruction should not be used. See *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

[Fifth] [Sixth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.35

FAILURE TO PROVIDE SECURITY (OWNER)—DEFINED

Under Minnesota law, whoever is the owner of a motor vehicle or motorcycle with respect to which (insurance) (security) is required under Minnesota law and

[1] operates the motor vehicle or motorcycle

[2] permits the motor vehicle or motorcycle to be operated

upon a public highway, street, or road in this state, and knows or has reason to know that the motor vehicle or motorcycle does not have (insurance) (security) complying with Minnesota law, is guilty of a crime.

COMMENT

M.S.A. § 65B.67, subd. 2.

This instruction provides for the option of substituting the word "insurance" for the statutory term "security," since in almost all cases, it is lack of insurance that is at issue, and since the word "insurance" will be more readily understandable to the jury. The term "Minnesota law" has also been substituted for the statutory language "sections 65B.41 to 65B.71" and "the terms of section 65B.49."

CRIMJIG 29.36

FAILURE TO PROVIDE SECURITY (OWNER)—ELEMENTS

The elements of (operating) (permitting a vehicle to be operated) without (insurance) (security) are:

First, the defendant owned a (motor vehicle) (motorcycle) requiring (insurance) (security) under Minnesota law. [Minnesota law requires every owner of a motor vehicle to maintain a "plan of reparation security" to insure against loss resulting from liability arising out of the ownership, maintenance, operation, or use of the motor vehicle. The security may be provided by an insurance policy issued by an authorized insurance company, or by a plan of self-insurance approved by the State Commissioner of Public Safety.]

Second, the defendant

[1] operated the (motor vehicle) (motorcycle) upon a public highway, street, or road.

[2] permitted the (motor vehicle) (motorcycle) to have been operated upon a public highway, street, or road.

Third, the defendant knew or had reason to know that the (motor vehicle) (motorcycle) did not have (insurance) (security) complying with Minnesota law.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See the comment to CRIMJIG 29.35 regarding substitution of the word "insurance" for "security," and "Minnesota law" for "sections 65B.41 to 65B.71" and "the terms of section 65B.48."

The first element presupposes that the vehicle in question falls within the statute. While there may be some factual determinations necessary in determining whether or not security is required, this is essentially a matter of statutory interpretation and should be determined by the court. The bracketed portion therefore serves only as a brief explanation to the jury that security or insurance is required. This leaves ownership as the only issue in the first element. If ownership is contested and needs defining, a more complete instruction will have to be drafted according to the particular circumstances of the case. For the definition of owner as it pertains to the No-Fault Act, see M.S.A. § 65B.43, subd. 4. *See also* M.S.A. § 168A.01 *et seq.*, regarding certificates of title and transfer of title.

Motor vehicle and motorcycle are defined, for the purposes of this statute, in M.S.A. § 65B.43, subds. 2, 13. "Street or highway" and "roadway," are defined in M.S.A. § 169.011, subds. 69, 81. Although the term "operate" is not defined in the no fault act, see CRIMJIG 29.02 and the comment thereto for the case law definitions that have evolved from DWI and implied consent litigation.

The term "permitted" in the second element [2] clearly includes knowledge and consent, or at least acquiescence, on the part of the defendant. A question may arise as to whether a violation of the statute requires permission regarding the specific driving incident in question, or whether "standing" permission for general use of the vehicle would be sufficient for there to be a violation of the statute. While there are no Minnesota cases on point, there have been a significant number of Minnesota appellate decisions regarding litigation under M.S.A. § 170.54 on the related question of whether or not there has been consent by the owner sufficient to establish liability under the safety responsibility act. For the defendant to be criminally liable, it would seem that the driver would have to have had permission to be operating the vehicle at the specific time in question. Absent a showing of specific permission relating to that particular incident, the issue of whether an earlier or "blanket" permission was still in effect would be a question of fact for the jury, and one that the State would have to prove beyond a reasonable doubt.

In *State v. Fairchild*, 444 N.W.2d 572 (Minn. App. 1989), the Court of Appeals held that, in order to sustain a criminal conviction for operating a motor vehicle without liability insurance, the prosecution must prove that there was not insurance on the vehicle, and the driver knew or had reason to know that the vehicle had no insurance coverage. The Court held that presentation of evidence that the driver did not have proof of insurance in possession at the time of the court appearance was insufficient to sustain a conviction for operation without insurance.

CRIMJIG 29.37

OPERATING WITHOUT SECURITY—NON-OWNER—DEFINED

Under Minnesota law, whoever operates a motor vehicle or motorcycle upon a public highway, street, or road in this state, with knowledge that the owner does not have (insurance) (security) complying with Minnesota law in full force and effect, is guilty of a crime.

COMMENT

M.S.A. § 65B.67, subd. 3.

See the Comment to CRIMJIG 29.35 regarding use of the word "insurance" in place of "security," and "Minnesota law" in place of "the terms of section 65B.48."

In *State v. Mayard*, 573 N.W.2d 707 (Minn. App. 1998), the Court of Appeals held this was a strict liability statute and does not require proof of criminal intent.

CRIMJIG 29.38

OPERATING WITHOUT SECURITY—NON-OWNER—ELEMENTS

The elements of operating without (insurance) (security) are:

First, the defendant operated a (motor vehicle) (motorcycle) upon a public highway, street, or road.

Second, the (motor vehicle) (motorcycle) did not have (insurance) (security) [complying with Minnesota law]. [Minnesota law requires every owner of a motor vehicle to maintain a "plan of reparation security" to insure against loss resulting from liability arising out of the ownership, maintenance, operation, or use of the motor vehicle. The security may be provided by an insurance policy issued by an authorized insurance company, or by a plan of self-insurance approved by the State Commissioner of Public Safety.]

Third, the defendant knew that the owner did not have (insurance) (security) for the (motor vehicle) (motorcycle).

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See the Comment to CRIMJIG 29.35 regarding the use of the word "insurance" in place of "security," as well as all other terms and definitions used in this instruction.

In *State v. Cuypers*, 559 N.W.2d 435 (Minn. App. 1997), the Court of Appeals rejected a claim that the Minnesota No Fault Automobile Insurance Act unconstitutionally impaired the defendant's First Amendment right to travel. The Court held that the Constitution was not violated because the Act regulates only one mode of transportation, and its purpose is to compensate accident victims rather than to deter travel.

This instruction presupposes that the issue of whether or not security is required is a matter of statutory interpretation and, therefore, a mixed question of law and fact for the court to determine prior to trial. Thus, the bracketed portions of the second element serve only as a brief explanation to the jury that security or insurance is required. If the parties so stipulate, the bracketed portions need not be read.

CRIMJIG 29.39

FAILURE TO STOP AND GIVE INFORMATION—ATTENDED VEHICLE—NO PERSONAL INJURY—DEFINED

Under Minnesota law, whoever is the driver of any vehicle involved in a collision with a vehicle driven or attended by any person and fails to immediately stop such vehicle at the scene of an accident, or as close thereto as possible, fails to forthwith return to the scene, or fails to remain at the scene of the accident until fulfilling the statutory requirements as to the giving of information, is guilty of a crime.

COMMENT

M.S.A. § 169.09, subd. 2.

The Court of Appeals held in the *Matter of Welfare of R.M.J., II*, 438 N.W.2d 410 (Minn. App. 1989) that the provisions of M.S.A. § 169.09 did not apply to a snowmobile operated on a state recreational trail. A 1989 amendment to M.S.A. § 84.87, subd. 1, overruled that holding and now provides that M.S.A. § 169.09 applies to the operation of snowmobiles anywhere in the state or on the ice of any boundary water of the state.

CRIMJIG 29.40

FAILURE TO STOP AND GIVE INFORMATION—ATTENDED VEHICLE—NO PERSONAL INJURY—ELEMENTS

The elements of failing to stop and give information are:

First, the defendant was the driver of a vehicle involved in a collision with a vehicle driven or attended by another person. ["Attended" means that there was a person in, upon, or in immediate proximity to the vehicle.]

[1] Second, the defendant failed to stop the vehicle at the scene of the collision, or as close to the scene as possible and reasonably investigate what was struck.

[2] Second, the defendant knew or had reason to know the collision resulted in damage to the unattended vehicle.

Third, the defendant failed to immediately stop at the scene of the collision, or as close to the scene as possible, (and return to) and remain at the scene until the defendant had provided (his) (her) name, address, date of birth, and vehicle registration number (and exhibited (his) (her) driver's license or permit).

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 169.09, subd. 15, provides that it is an affirmative defense to a prosecution under this subdivision if the driver left the scene of the accident to take a person suffering immediately demonstrable bodily injury in the accident to receive emergency medical care. The driver must also have given notice as required by M.S.A. § 169.09, subd. 6, to a law enforcement agency as soon as reasonably feasible after the emergency care has been undertaken. *See* CRIMJIG 11.86.

CRIMJIG 29.41

FAILURE TO STOP AND GIVE INFORMATION—BODILY INJURY/DEATH/DAMAGE TO ATTENDED VEHICLE—DEFINED

Under Minnesota law, whoever is the driver of any vehicle involved in an collision resulting in (bodily injury to or death of any person) (damage to any vehicle that is driven or attended by any person), and fails to stop and

> [1] give (his) (her) name, address, and date of birth, and the registration number of the vehicle (he) (she) is driving and, upon request and if available, exhibit (his) (her) driver's license or permit to drive to the person struck or the driver or occupant of or person attending any vehicle collided with,

> [2] give (his) (her) name, address, and date of birth, and the registration number of the vehicle (he) (she) is driving and, upon request, exhibit (his) (her) license or permit to any peace officer who is at the scene of the accident or who is investigating the accident,

[3] render reasonable assistance to any person injured in such accident,

is guilty of a crime.

COMMENT

M.S.A. § 169.09, subd. 3(a).

CRIMJIG 29.42

FAILURE TO STOP AND GIVE INFORMATION—BODILY INJURY/DEATH/DAMAGE TO ATTENDED VEHICLE—ELEMENTS

The elements of failing to stop and give information are:

First, the defendant was the driver of a vehicle involved in a collision resulting in (bodily injury to or death of any person) (damage to any vehicle driven or attended by any person. "Attended" means there was a person in, upon, or in immediate proximity to the vehicle).

Second, the defendant knew or had reason to know that the (he) (she) was involved in a collision that involved bodily injury to or death of another, or damage to any vehicle driven or attended by another.

Third, the defendant failed to stop and

[1] give (his) (her) name, address, and date of birth, and the registration number of the vehicle (he) (she) was driving and, if so requested and if available, exhibit (his) (her) driver's license or permit to drive to (the person struck) (the driver or occupant of any vehicle collided with) (a person attending any vehicle collided with).

[2] give (his) (her) name, address, and date of birth, and the registration number of the vehicle (he) (she) was driving and, if so requested, exhibit (his) (her) driver's license or permit to drive to any peace officer who is at the scene of the collision or who is investigating the collision.

[3] render reasonable assistance to any person injured in such an accident.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find

that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.43

FAILURE TO STOP AND GIVE INFORMATION—UNATTENDED VEHICLE—DEFINED

Under Minnesota law, whoever is the driver of any vehicle that collides with and damages any unattended vehicle and fails to stop immediately, locate and notify the driver or owner of the vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle, report the same to a peace officer, or leave in a conspicuous place in or secured to the unattended vehicle a written notice giving the name and address of the driver and owner of the vehicle doing the striking, is guilty of a crime.

COMMENT

M.S.A. § 169.09, subd. 4.

CRIMJIG 29.44

FAILURE TO STOP AND GIVE INFORMATION—UNATTENDED VEHICLE—ELEMENTS

The elements of failing to stop and give information after a collision with an unattended vehicle are:

First, the defendant was the driver of a vehicle that collided with an unattended vehicle. ["Unattended" means the vehicle was not occupied, and there was no person in the immediate vicinity looking after the vehicle.]

[1] Second, the defendant failed to stop the vehicle at the scene of the collision, or as close to the scene as possible and reasonably investigate what was struck.

[2] Second, the defendant knew or had reason to know the collision resulted in damage to the unattended vehicle.

Third, the defendant failed to stop immediately and provide (his) (her) name and address and the name and address of the owner of the vehicle (he) (she) was driving in any of the following ways:

[a] by locating and notifying the driver or owner of the unattended vehicle.

[b] by reporting this information to a police officer.

[c] by leaving written notice containing this information in a conspicuous place in or secured to the unattended vehicle.

[Third] [Fourth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

The statute does not define either attended or unattended vehicle, nor is there any Minnesota case law on point in the context of leaving the scene of an accident. Almost all reported case law dealing with attended or unattended vehicles tends to fall within two categories: statutes or ordinances that prohibit leaving a vehicle "unattended" without first turning off the engine, locking the ignition, and removing the keys, and cases interpreting insurance policy exclusion clauses. The former cases, which concern public safety, generally hold that a vehicle is not attended unless the person in charge is competent and capable of preventing any of the probable dangers to the public inherent in leaving a standing vehicle running. *Ceen v. Checker Taxi Co. Inc.*, 355 N.E.2d 628, 631 (Ill. 1976); *Lustbader v. Traders Delivery Co.*, 67 A.2d 237, 240 (Md. 1949). The cases interpreting insurance policy exclusion clauses, on the other hand, focus on whether or not there was anyone present in or near the vehicle. *See, e.g., Phil G. Ruvelson, Inc. v. St. Paul Fire & Marine Ins. Co.*, 235 Minn. 243, 50 N.W.2d 629 (1951); *Dreiblatt v. Taylor*, 188 Misc. 199, 67 N.Y.S.2d 378 (1947).

The purpose behind the "hit and run" statute, in relation to potential injury to persons in or about an attended vehicle as well as notice to the owner of an unattended vehicle, suggests that the terms should have a meaning closer to that in the insurance policy cases, and it is with this in mind that the definitions used in these instructions have been drafted.

CRIMJIG 29.45

APPROACHING SCHOOL BUS—DEFINED

Under Minnesota law, when a school bus displaying an extended stop signal arm and flashing red lights is stopped [on a street or highway] [in any location where school bus stop signs have been placed by a local authority], the driver of any vehicle who

[1] fails to stop the vehicle at least 20 feet away from the bus,

[2] allows the vehicle to move before the bus stop signal arm is retracted and the red lights are no longer flashing,

[3] passes or attempts to pass the school bus on the right hand, passenger door side of the bus

[4] passes or attempts to pass the school bus when a school child was outside of and on the street or highway used by the school bus or on the adjacent sidewalk.

is guilty of a crime.

COMMENT

M.S.A. § 169.444, subd. 1.

CRIMJIG 29.46

APPROACHING SCHOOL BUS—ELEMENTS

The elements of failing to stop (and remain stopped) upon approaching a school bus are:

[1] First, the defendant drove a motor vehicle. A "motor vehicle" means every vehicle which is self-propelled, and every vehicle that is propelled by electric power obtained from overhead trolley wires. ["Motor vehicle" does not include a vehicle moved solely by human power.]

[2] First, the defendant drove a vehicle. ""Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

Second, the defendant approached a school bus[1] that had stopped on a (street) (highway) (location where a school bus stop sign had been placed by local authority).

Third, the school bus was stopped and displaying an extended stop signal arm and flashing red lights.

Fourth, the defendant:

[1] failed to stop the [motor] vehicle at least 20 feet away from the bus.

[2] failed to remain stopped at least 20 feet away from the bus until the school bus stop signal arm was retracted, and the red lights were no longer flashing.

[3] passed or attempted to pass the school bus on the right hand, passenger door side of the bus.

[4] passed or attempteed to pass the school bus when a

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[1] In order to be classified as a "school bus" the vehicle must meet the equipment and signage requirements of M.S.A. § 169.441.

school child was outside of and on the street or highway used by the school bus or on the adjacent sidewalk.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Authority to use or activate the signals on the bus is not an element of the offense. *State v. Miho*, 372 N.W.2d 754 (Minn. App. 1985).

CRIMJIG 29.47

FAILURE TO STOP FOR A TRAFFIC-CONTROL SIGNAL (SEMAPHORE)—DEFINED

Under Minnesota law, whoever operates a vehicle and fails to stop when facing a circular red traffic signal (at a clearly marked stop line) (before entering the crosswalk on the near side of the intersection) (before entering the intersection) and remain standing until a green indication is shown is guilty of a traffic violation.

COMMENT

M.S.A. § 169.06, subd. 5(c)(1).

CRIMJIG 29.48

FAILURE TO STOP FOR A TRAFFIC-CONTROL SIGNAL (SEMAPHORE)—ELEMENTS

The elements of failure to obey a traffic-control signal are:

First, the defendant operated a vehicle facing a circular red traffic control signal. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

Second, the defendant failed to stop the vehicle (at a clearly marked stop line) (before entering the crosswalk on the near side of the intersection) (before entering the intersection).

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

"Traffic control signal" is defined in M.S.A. § 169.011, subd. 85. "Vehicle" is defined in M.S.A. § 169.011, subd. 92.

The choice of which parenthetical phrase to use depends upon the markings at the intersection in question and the language of the complaint.

"Crosswalk" is defined in M.S.A. § 169.01, subd. 37.

"Intersection" is defined in M.S.A. § 169.01, subd. 36.

CRIMJIG 29.49

FAILURE TO OBEY TRAFFIC-CONTROL DEVICE—DEFINED

Under Minnesota law, whoever fails to obey the instructions of any official traffic-control device (placed in accordance with the Minnesota highway traffic regulation laws) (unless otherwise directed by a traffic or peace officer) is guilty of a traffic violation.

COMMENT

M.S.A. § 169.06, subd. 4(a).

It is recommended that the parenthetical phrases be read only when at issue.

CRIMJIG 29.50

FAILURE TO OBEY TRAFFIC-CONTROL DEVICE—ELEMENTS

The elements of failure to obey a traffic-control device are:

First, the defendant was the driver of a vehicle whose movement was regulated by an official traffic-control device.

Second, the defendant, while driving the vehicle, failed to obey the instructions of the traffic-control device by ________.[1]

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

"Official traffic-control devices" are defined in M.S.A. § 169.011, subd. 49. "Vehicle" is defined in M.S.A. § 169.011, subd.92.

M.S.A. § 169.06, subd. 4(b), provides that:

> No provision of this chapter for which official traffic-control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that official traffic-control devices are required, such section shall be effective even though no devices are erected or in place.

M.S.A. § 169.06, subd. 4(c) and (d), establish presumptions as to the lawful placement of signs and their compliance with the statutory requirements, "unless the contrary shall be established by competent evidence."

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[1] The specific violation charged.

CRIMJIG 29.51

SPEED—DEFINED

Under Minnesota law, whoever drives a vehicle at a speed in excess of the posted speed limit is guilty of a traffic violation.

COMMENT

M.S.A. § 169.14.

CRIMJIG 29.52

SPEED—ELEMENTS

The elements of speeding are:

First, the defendant drove a vehicle in an area where there was a posted speed limit.

Second, the speed of the defendant's vehicle exceeded the posted speed limit.

Third, the defendant's act occurred on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

This instruction is a generic compilation of M.S.A. § 169.14, subds. 4, 5, 5a and 5b, and is designed for the typical case where the only issue is whether or not the defendant was exceeding the posted limit. For those cases where there is a contested issue as to the authority or manner in which the limit was determined or posted, reference should be made to the particular subdivision, as well as to M.S.A. § 169.06, subd. 4.

CRIMJIG 29.53

WRONG WAY ON ONE WAY—DEFINED

Under Minnesota law, whoever operates a vehicle when a roadway is designated and sign-posted for one-way traffic as a one-way roadway, other than in the direction designated, is guilty of a traffic violation.

COMMENT

M.S.A. § 169.18, subd. 6(a).

CRIMJIG 29.54

WRONG WAY ON ONE WAY—ELEMENTS

The elements of driving the wrong way on a one-way roadway are:

First, the defendant drove a vehicle upon a roadway.

Second, the roadway was designated and sign-posted for one-way traffic and on which all vehicles are required to move in one indicated direction.

Third, the defendant drove a vehicle in a direction opposite of that designated by the sign(s).

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

"Vehicle" is defined in M.S.A. § 169.011, subd. 92. "Roadway" is defined in M.S.A. § 169.011, subd. 68. "One-way roadway" is defined in M.S.A. § 169.011, subd. 50.

CRIMJIG 29.55

ILLEGAL U-TURN—DEFINED

Under Minnesota law, whoever turns a vehicle so as to proceed in the opposite direction

> **[1] upon any curve, or upon the approach to or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within 1,000 feet**
>
> **[2] unless the movement can be made safely and without interfering with other traffic**

is guilty of a traffic law violation.

COMMENT

M.S.A. § 169.19, subd. 2.

CRIMJIG 29.56

ILLEGAL U-TURN—ELEMENTS

The elements of making an illegal U-turn are:

First, the defendant drove a vehicle upon a street or roadway.

Second, while doing so, the defendant turned a vehicle so as to proceed in the opposite direction.

[1] Third, the defendant

[A] executed the turn while upon a curve.

[B] executed the turn while upon the approach to or near the crest of a grade.

Fourth, the turn was executed at a point where the defendant's vehicle could not be seen by the driver of any other vehicle approaching from within 1,000 feet in either direction.

[2] Third, the defendant's act was not done safely and interfered with other traffic.

[Fourth] [Fifth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.57

FAILURE TO YIELD—PEDESTRIANS—ABSENCE OF SIGNALS—DEFINED

Under Minnesota law, whoever drives a vehicle shall stop to yield the right-of-way to a pedestrian crossing the roadway within a marked crosswalk or within any crosswalk at an intersection where traffic-control signals are not in place or in operation.

COMMENT

M.S.A. § 169.21, subd. 2.

CRIMJIG 29.58

FAILURE TO YIELD—PEDESTRIANS—ABSENCE OF SIGNALS—ELEMENTS

The elements of failure to yield to a pedestrian are:

First, the defendant drove a vehicle. “Vehicle” means a device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

Second, the defendant approached a pedestrian who was crossing the roadway (within a marked crosswalk) (within any crosswalk at an intersection) where traffic-control signals were not in (place) (operation).

Third, the defendant failed to stop to yield the right-of way.

Fourth, the defendant’s act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.59

OPERATING AIRCRAFT WHILE UNDER THE INFLUENCE OF ALCOHOL—DEFINED

Under Minnesota law, whoever operates or attempts to operate any aircraft on or over land or water, or over any boundary water, when the person is under the influence of alcohol, is guilty of a crime.

COMMENT

M.S.A. § 360.0752, subd. 2(a)(1).

CRIMJIGs 29.59 to 29.77 are modeled on CRIMJIGs 29.01 to 29.13, with modification made for the provision of M.S.A. § 360.0752, subd. 2(a)(8), which makes it a crime to operate an aircraft within eight hours of having consumed any alcoholic beverage or used any controlled substance.

CRIMJIG 29.60

OPERATING AIRCRAFT WHILE UNDER THE INFLUENCE OF ALCOHOL—ELEMENTS

The elements of operating or attempting to operate an aircraft while under the influence of alcohol are:

First, the defendant (operated) (attempted to operate) an aircraft. An "aircraft" is any contrivance used or designed for navigation of or flight in air [but excludes parachutes]. To "operate" includes the acts of all crew members with responsibility to operate the aircraft.

Second, at the time the defendant was (operating) (attempting to operate) the aircraft, the defendant was under the influence of alcohol.

There is no set standard as to the quantity of alcohol a person must consume before being regarded as "under the influence of alcohol." When a person is so affected by an alcoholic beverage that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is under the influence of alcohol. If as a result of consuming an alcoholic beverage the person's ability or capacity to operate an aircraft is impaired, the statute has been violated.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.61

OPERATING AIRCRAFT WHILE UNDER THE INFLUENCE OF CONTROLLED SUBSTANCE—DEFINED

Under Minnesota law, whoever operates or attempts to operate an aircraft on or over land or water, or over any boundary water, when the person is under the influence of a controlled substance, is guilty of a crime.

COMMENT

M.S.A. § 360.0752, subd. 2(a)(2).

CRIMJIG 29.62

OPERATING AIRCRAFT WHILE UNDER THE INFLUENCE OF CONTROLLED SUBSTANCE—ELEMENTS

The elements of operating or attempting to operate an aircraft while under the influence of a controlled substance are:

First, the defendant (operated) (attempted to operate) an aircraft. An "aircraft" is any contrivance used or designed for navigation of or flight in air [but excludes parachutes]. To "operate" includes the acts of all crew members with responsibility to operate the aircraft.

Second, at the time that the defendant was (operating) (attempting to operate) the aircraft, the defendant was under the influence of a controlled substance. ________ is a controlled substance. [As part of this element of the offense, the State must prove beyond a reasonable doubt that the substance was, in fact, ________.]

There is no set standard as to the quantity of a controlled substance a person must ingest before being regarded as "under the influence." When a person is so affected by a controlled substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is under the influence of a controlled substance. If, as a result of ingesting the controlled substance, the person's ability or capacity to operate an aircraft is impaired, the statute has been violated.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.63

OPERATING AIRCRAFT WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR A HAZARDOUS SUBSTANCE—DEFINED

Under Minnesota law, whoever operates or attempts to operate an aircraft on or over land or water, or over any boundary water, when the person is under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (a hazardous substance that affects the nervous system, brain, or muscles), is guilty of a crime.

COMMENT

M.S.A. § 360.0752, subd. 2(a)(3).

See Comment to CRIMJIG 29.65.

CRIMJIG 29.64

OPERATING AIRCRAFT WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR A HAZARDOUS SUBSTANCE—ELEMENTS

The elements of operating or attempting to operate an aircraft while under the influence of combination of (alcohol) (and) (a controlled substance) (and) (hazardous substance[1]) are:

First, the defendant (operated) (attempted to operate) an aircraft. An "aircraft" is any contrivance used or designed for navigation of or flight in air [but excludes parachutes]. To "operate" includes the acts of all crew members with responsibility to operate the aircraft.

Second, at the time the defendant was (operating) (attempting to operate) an aircraft, the defendant was under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (a hazardous substance that affects the nervous system, brain, or muscles). (________ is a controlled substance.) (________ is a hazardous substance.)[2]

It is not unlawful to ingest a hazardous substance and then (operate) (attempt to operate) an aircraft. The prohibition is against (operating) (attempting to operate) an aircraft while under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (a hazardous substance).

There is no set standard as to the quantity of (alcohol) (and) (a controlled substance) (and) (a hazardous substance) a person must ingest before being regarded as "under the influence." When a person is so affected by a combination of (an alcoholic beverage) (and) (a controlled substance) (and) (a hazardous

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[1] M.S.A. § 609.21, subd. 5, defines a "hazardous substance" as any chemical or chemical compound that is listed as a hazardous substance in rules adopted under Chapter 182. Through a series of further references, one can find the list of hazardous substances at 49 C.F.R. § 172.101, Appendix A.

[2] Whether a substance is a controlled substance or hazardous substance is to be determined by the court.

substance) that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.65

OPERATING AIRCRAFT WITH AN ALCOHOL CONCENTRATION OF 0.04 OR MORE—DEFINED

Under Minnesota law, whoever operates or attempts to operate an aircraft on or over land or water, or over any boundary water, when the person's alcohol concentration is 0.04 or more, is guilty of a crime.

COMMENT

M.S.A. § 360.0752, subd. 2(a)(5).

CRIMJIG 29.66

OPERATING AIRCRAFT WITH AN ALCOHOL CONCENTRATION OF 0.04 OR MORE—ELEMENTS

The elements of operating or attempting to operate an aircraft with an alcohol concentration of 0.04 or more are:

First, the defendant (operated) (attempted to operate) an aircraft. An "aircraft" is any contrivance used or designed for navigation of or flight in air [but excludes parachutes]. To "operate" includes the acts of all crew members with responsibility to operate the aircraft.

Second, at the time the defendant was (operating) (attempting to operate) an aircraft, the defendant's alcohol concentration was 0.04 or more. In this case, the defendant took a (breath) (blood) (urine) test to determine the defendant's alcohol concentration. The State has introduced evidence of the testing method used and the results of the test that was administered to the defendant. You must evaluate the reliability of the testing method and the test results in determining whether the defendant's alcohol concentration was 0.04 or more at the time the defendant was (operating) (attempting to operate) an aircraft.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.67

OPERATING AIRCRAFT WITH AN ALCOHOL CONCENTRATION OF 0.04 OR MORE AS MEASURED WITHIN TWO HOURS OF THE TIME OF OPERATION—DEFINED

Under Minnesota law, whoever operates or attempts to operate an aircraft on or over land or water, or over any boundary water, when the person's alcohol concentration as measured within two hours of the time of operation is 0.04 or more, is guilty of a crime.

COMMENT

M.S.A. § 360.0752, subd. 2(e).

See Comment to CRIMJIG 29.59.

CRIMJIG 29.68

OPERATING AIRCRAFT WITH AN ALCOHOL CONCENTRATION OF 0.04 OR MORE AS MEASURED WITHIN TWO HOURS OF THE TIME OF OPERATION—ELEMENTS

The elements of operating or attempting to operate an aircraft with an alcohol concentration of 0.04 or more as measured within two hours of the time of operation are:

First, the defendant (operated) (attempted to operate) an aircraft. An "aircraft" is any contrivance used or designed for navigation of or flight in air [but excludes parachutes]. To "operate" includes the acts of all crew members with responsibility to operate the aircraft.

Second, within two hours of the time the defendant (operated) (attempted to operate) an aircraft, the defendant's alcohol concentration was 0.04 or more. The defendant took a (breath) (blood) (urine) test to determine the defendant's alcohol concentration. The State has introduced evidence of the testing method used and the results of the test that was administered to the defendant. You must evaluate the reliability of the testing method and the test results in determining whether the defendant's alcohol concentration was 0.04 or more within two hours of the time of operation.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

In *State v. Banken*, 690 N.W.2d 367 (Minn. App. 2004), the Court of Appeals held that M.S.A. § 169A.20, subd. 1(5), allowed the use of a breath test sample obtained more than two hours after driving to measure and determine that a driver's alcohol concentration exceeded the legal limit within two hours of driving, relying on *State v. Gebeck*, 635 N.W.2d 385 (Minn. App. 2001), a vehicular homicide case. It should be noted that the measure was taken two hours and fourteen minutes after arrest and appellant admitted that he had not consumed additional alcohol while in custody.

In proving the reliability of the test method and test result, the state does not need to introduce expert testimony as to the test method in addition to the Intoxilyzer result. The jury, in *State v. Birk*, 687 N.W.2d 634 (Minn. App. 2004), was presented with sufficient circumstantial evidence from which it could infer that the method and the results were reliable.

CRIMJIG 29.69

OPERATING AIRCRAFT WITH AN ALCOHOL CONCENTRATION OF 0.04 OR MORE AS MEASURED WITHIN TWO HOURS OF THE TIME OF OPERATION—AFFIRMATIVE DEFENSE

The defendant is not guilty of violating this statute if you are convinced, by a preponderance of the evidence, that the defendant consumed a sufficient quantity of alcohol after the time of actually (operating) (attempting to operate) an aircraft and before the administration of the evidentiary test to cause the defendant's alcohol concentration to exceed 0.04.

The term "preponderance of the evidence" means that all of the evidence produced must lead you to believe it is more likely that the claim is true than not true. Therefore, if you find it is more likely true than not true that the defendant's alcohol concentration exceeded 0.04 as a result of alcohol consumed after the time of actually (operating) (attempting to operate) an aircraft, the defendant is not guilty of this offense. If you are not so convinced the defense has not been proven, and if the State has proven each element of the offense beyond a reasonable doubt, the defendant is guilty.

COMMENT

M.S.A. § 360.0752, subd. 5.

See Comment to CRIMJIG 29.65.

CRIMJIG 29.70

OPERATING AIRCRAFT WHILE UNDER THE INFLUENCE OF A HAZARDOUS SUBSTANCE—DEFINED

Under Minnesota law, whoever operates or attempts to operate an aircraft on or over land or water, or over any boundary water, when the person is knowingly under the influence of a hazardous substance that affects the nervous system, brain, or muscles so as to substantially impair the person's ability to operate the aircraft, is guilty of a crime.

COMMENT

M.S.A. § 360.0752, subd. 2(a)(6).

See Comment to CRIMJIG 29.59.

CRIMJIG 29.71

OPERATING AIRCRAFT WHILE UNDER THE INFLUENCE OF A HAZARDOUS SUBSTANCE—ELEMENTS

The elements of operating or attempting to operate an aircraft while under the influence of a hazardous substance are:

First, the defendant (operated) (attempted to operate) an aircraft. An "aircraft" is any contrivance used or designed for navigation of or flight in air [but excludes parachutes]. To "operate" includes the acts of all crew members with responsibility to operate the aircraft.

Second, at the time the defendant was (operating) (attempting to operate) an aircraft, the defendant was knowingly under the influence of a hazardous substance[1] that affects the nervous system, brain, or muscles. ________ is a hazardous substance. [As part of this element of the offense, the State must prove beyond a reasonable doubt that the substance was, in fact, ________.]

It is not unlawful to ingest hazardous substances and then (operate) (attempt to operate) an aircraft. The prohibition is against (operating) (attempting to operate) an aircraft while knowingly under the influence of a hazardous substance.

There is no set standard as to the quantity of a hazardous substance a person must consume before being regarded as "under the influence." When a person is so affected by a hazardous substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is under the influence of a hazardous substance.

29.71

[1] M.S.A. § 609.21, subd. 5, defines a "hazardous substance" as any chemical or chemical compound that is listed as a hazardous substance in rules adopted under Chapter 182. Through a series of further references, one can find the list of hazardous substances at 49 C.F.R. § 172.101, Appendix A.

If a person ingests a hazardous substance and is not thereby influenced in the operation of an aircraft, there is no violation of the statute. If, as a result of ingesting the hazardous substance, the person's ability or capacity to operate an aircraft is impaired, the statute has been violated.

Third, the hazardous substance acted so as to substantially impair defendant's ability to operate the aircraft.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.72

OPERATING AIRCRAFT WITHIN 8 HOURS OF CONSUMING OR USING ALCOHOLIC BEVERAGES OR A CONTROLLED SUBSTANCE—DEFINED

Under Minnesota law, whoever operates or attempts to operate an aircraft on or over land or water, or over any boundary water, within eight hours of having (consumed any alcoholic beverage) (used any controlled substance), is guilty of a crime.

COMMENT

M.S.A. § 360.0752, subd. 2(a)(8).

See Comment to CRIMJIG 29.59.

CRIMJIG 29.73

OPERATING AIRCRAFT WITHIN 8 HOURS OF CONSUMING OR USING ALCOHOLIC BEVERAGES OR A CONTROLLED SUBSTANCE—ELEMENTS

The elements of operating or attempting to operate an aircraft within eight hours of (consuming an alcoholic beverage) (using a controlled substance) are:

First, the defendant (operated) (attempted to operate) an aircraft. An "aircraft" is any contrivance used or designed for navigation of or flight in air [but excludes parachutes]. To "operate" includes the acts of all crew members with responsibility to operate the aircraft.

Second, within eight hours prior to (operation) (attempted operation) of an aircraft, the defendant (consumed an alcoholic beverage) (used a controlled substance). To prove this element, it is not necessary to show that the defendant was under the influence of (alcohol) (a controlled substance) at the time the defendant (operated) (attempted to operate) an aircraft.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.74

REFUSAL TO SUBMIT TO TESTING—AIRCRAFT OPERATION—DEFINED

Under Minnesota law, whoever refuses to submit to a chemical test of the person's (blood) (breath) (urine) under the aircraft implied consent law is guilty of a crime.

COMMENT

M.S.A. § 360.0752, subd. 2a.

CRIMJIG 29.75

REFUSAL TO SUBMIT TO TESTING—AIRCRAFT OPERATION—ELEMENTS

The elements of refusal to submit to testing are:

First, a peace officer had probable cause to believe that the defendant operated or attempted to operate an aircraft while under the influence of alcohol. In order to find that the officer had "probable cause," you must first look at the totality of the circumstances leading to the stop, based upon the objective facts and circumstances testified to by the arresting officer, as well as the officer's training and experience. If you find those circumstances would lead a reasonable officer to have an honest and strong suspicion that the defendant was operating or attempting to operate an aircraft while under the influence of alcohol, then the arresting officer had probable cause.

Second, the defendant was requested by a peace officer to submit to a chemical test of the defendant's (blood) (breath) (urine).

Third, the defendant refused to submit to the test.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See the Comment to CRIMJIG 29.22 for determination of probable cause.

This instruction should be used when the alleged violation involves alcohol. The instruction should be appropriately modified if the officer has probable cause to invoke the implied consent law under other provisions of the statute.

CRIMJIG 29.76

OPERATING AIRCRAFT—PRESENCE OF CONTROLLED SUBSTANCE—DEFINED

Under Minnesota law whoever operates or attempts to operate an aircraft on or over land or water, or over any boundary water, when the person's body contains any amount of ________,[1] is guilty of a crime.

COMMENT

M.S.A. § 360.0752, subd. 2(7).

29.76

[1] A controlled substance listed as Schedule I or II, other than marijuana or tetrahydrocannabinols.

CRIMJIG 29.77

OPERATING AIRCRAFT—PRESENCE OF CONTROLLED SUBSTANCE—ELEMENTS

The elements of operating or attempting to operate an aircraft while under the influence of a controlled substance are:

First, the defendant [operated] [attempted to operate] an aircraft. An "aircraft" is any contrivance used or designed for navigation of or flight in air. To "operate" includes the acts of all crew members with responsibility to operate the aircraft.

Second, at the time the defendant was [operating] [attempting to operate] the aircraft, the defendant's body contained any amount of ________.[1] It is not necessary for the State to prove that the defendant was under the influence of the controlled substance.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 360.0752, subd. 2(7).

29.77

[1] A controlled substance listed as Schedule I or II, other than marijuana or tetrahydrocannabinols.

CRIMJIG 29.78

FAILURE TO DISPLAY SAFETY INSPECTION DECAL—DEFINED

Under Minnesota law, whoever (operates) (permits the operation of) a commercial motor vehicle registered in Minnesota, if the vehicle does not display a valid safety inspection decal issued by an inspector certified by the Commissioner of Public Safety, or does not carry proof that the vehicle complies with the federal motor vehicle inspection requirements for vehicles in interstate commerce and a certificate of compliance with federal requirements issued by the Commissioner, is guilty of a crime.

CRIMJIG 29.79

FAILURE TO DISPLAY SAFETY INSPECTION DECAL—ELEMENTS

The elements of failure to display a safety inspection decal are:

First, the defendant (operated) (permitted the operation of) a commercial motor vehicle. A "commercial motor vehicle" is a motor vehicle, a combination of motor vehicles, or a vehicle in combination drawn by a commercial motor vehicle used to transport passengers or property if the motor vehicle (has a gross weight of more than 26,000 pounds) (has a towed unit with a gross weight of more than 10,000 pounds, and the combination of vehicles has a combined gross vehicle weight of more than 26,000 pounds) (is a bus) (is of any size and is used in the transportation of ________[1]). ["Commercial motor vehicle" does not include a school bus displaying a school bus safety certificate issued by the Commissioner of Public Safety, a bus operated by the metropolitan transit commission or a local transit commission, or a motor vehicle with a gross weight of not more than 26,000 pounds carrying in bulk tanks a total of not more than 200 gallons of petroleum products, liquid fertilizer, or pesticide.]

Second, the commercial motor vehicle was registered in the State of Minnesota.

Third, the commercial vehicle did not display a valid safety inspection decal issued by an inspector certified by the Commissioner of Public Safety, proof that the vehicle complied with federal motor vehicle inspection requirements for vehicles in interstate commerce, or a certificate of compliance with federal requirements issued by the Commissioner.[2]

Fourth, the defendant's act took place on (or about) ________ in ________ County.

29.79

[1] A hazardous material as defined under M.S.A. § 169.01, subd. 7b.

[2] *See* 49 Code of Federal Regulations, § 396.17, and Chapter III, Subchapter B, Appendix G.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.80

OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL—DEFINED

Under Minnesota law, whoever [(operates) (is in physical control of)] [(a snowmobile) (an all-terrain vehicle)] within this state or on the ice of any boundary water, when the person is under the influence of alcohol, is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 1b(1); M.S.A. § 84.91, subd. 1(c).

CRIMJIG 29.81

OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL—ELEMENTS

The elements of [(operating) (being in physical control of)] [(a snowmobile) (an all-terrain vehicle)] while under the influence of alcohol are:

First, the defendant [(operated) (was in physical control of)] [(a snowmobile) (an all-terrain vehicle)]. [A person "operates" a vehicle when the person manipulates or activates any of the controls of a vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was [(operating) (in physical control of)] [(a snowmobile) (an all-terrain vehicle)], the defendant was under the influence of alcohol.

It is not unlawful to drink alcoholic beverages and then [(operate) (be in physical control of)] [(a snowmobile) (an all-terrain vehicle)]. The prohibition is against [(operating) (being in physical control of)] [(a snowmobile) (an all-terrain vehicle)] while under the influence of alcohol.

There is no set standard as to the quantity of alcohol a person must consume before being regarded as "under the influence of alcohol." When a person is so affected by an alcoholic beverage that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is under the influence of alcohol.

If a person consumes an alcoholic beverage and is not thereby influenced in the operation of a vehicle, there is no violation of the statute. If, as a result of consuming an alcoholic beverage, the person's ability or capacity to [(operate) (be in physical control of)] [(a snowmobile) (an all-terrain vehicle)] is impaired, the statute has been violated.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.82

OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WHILE UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE—DEFINED

The statutes of Minnesota provide that whoever [(operates) (is in physical control of)] [(a snowmobile) (an all-terrain vehicle)] within this state or on the ice of any boundary water, when the person is under the influence of a controlled substance, is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 1b(2); M.S.A. § 84.91, subd. 1(c).

CRIMJIG 29.83

OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WHILE UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE—ELEMENTS

The elements of [(operating) (being in physical control of)] [(a snowmobile) (an all-terrain vehicle)] while under the influence of a controlled substance are:

First, the defendant [(operated) (was in physical control of)] [(a snowmobile) (an all-terrain vehicle)]. [A person "operates" a vehicle when the person manipulates or activates any of the controls of a vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was [(operating) (in physical control of)] [(a snowmobile) (an all-terrain vehicle)], the defendant was under the influence of a controlled substance. ________ is a controlled substance. [As part of this element of the offense, the State must prove beyond a reasonable doubt that the substance was, in fact, ________.]

It is not unlawful to ingest a controlled substance and then [(operate) (be in physical control of)] [(a snowmobile) (an all terrain vehicle)]. The prohibition is against [(operating) (being in physical control of)] [(a snowmobile) (an all-terrain vehicle)] while under the influence of a controlled substance.

There is no set standard as to the quantity of a controlled substance a person must ingest before being regarded as "under the influence." When a person is so affected by a controlled substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is under the influence of a controlled substance.

If a person ingests a controlled substance and is not thereby influenced in the operation of a vehicle, there is no violation of the statute. If, as a result of ingesting a controlled substance, the person's ability or capacity to [(operate) (be in physical control of)] [(a snowmobile) (an all-terrain vehicle)] is impaired, the statute has been violated.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.84

OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR HAZARDOUS SUBSTANCE—DEFINED

Under Minnesota law, whoever [(operates) (is in physical control of)] [(a snowmobile) (an all-terrain vehicle)] within this state or on the ice of any boundary water, when the person is under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (a hazardous substance that affects the nervous system, brain, or muscles), is guilty of a crime.

COMMENT

M.S.A. 169A.20, subd. 1b(4); M.S.A. § 84.91, subd. 1(c).

CRIMJIG 29.85

OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR HAZARDOUS SUBSTANCE—ELEMENTS

The elements of [(operating) (being in physical control of)] [(a snowmobile) (an all-terrain vehicle)] while under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (hazardous substance[1]) are:

First, the defendant [(operated) (was in physical control of)] [(a snowmobile) (an all-terrain vehicle)]. [A person "operates" a vehicle when the person manipulates or activates any of the controls of a vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was [(operating) (in physical control of)] [(a snowmobile) (an all-terrain vehicle)], the defendant was under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (a hazardous substance that affects the nervous system, brain, or muscles). (________ is a controlled substance) (and) (________ is a hazardous substance).[2]

It is not unlawful to (drink alcoholic beverages) or (ingest a controlled substance) or (ingest a hazardous substance) and then [(operate) (be in physical control of)] [(a snowmobile) (an all-terrain vehicle)]. The prohibition is against [(operating) (being in physical control of)] [(a snowmobile) (an all-terrain vehicle)]

29.85

[1] Whether a substance is a controlled substance or hazardous substance is to be determined by the court.

[2] M.S.A. § 609.21, subd. 5, defines a "hazardous substance" as any chemical or chemical compound that is listed as a hazardous substance in rules adopted under Chapter 182. Through a series of further references, one can find the list of hazardous substances at 49 C.F.R. § 172.101, Appendix A.

while under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (a hazardous substance).

There is no set standard as to the quantity of (alcohol) (and) (a controlled substance) (and) (a hazardous substance) a person must ingest before being regarded as "under the influence." When a person is so affected by a combination of (an alcoholic beverage) (a controlled substance) that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.86

OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WITH AN ALCOHOL CONCENTRATION OF 0.08 OR MORE—DEFINED

Under Minnesota law, whoever [(operates) (is in physical control of)] [(a snowmobile) (an all-terrain vehicle)] within this state or on the ice of any boundary water, when the person's alcohol concentration is 0.08 or more, is guilty of a crime.

COMMENT

M.S.A. 169A.20, subd. 1b(5); M.S.A. § 84.91, subd. 1(c).

CRIMJIG 29.87

OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WITH AN ALCOHOL CONCENTRATION OF 0.08 OR MORE—ELEMENTS

The elements of [(operating) (being in physical control of)] [(a snowmobile) (an all-terrain vehicle)] with an alcohol concentration of 0.08 or more are:

First, the defendant [(operated) (was in physical control of)] [(a snowmobile) (an all-terrain vehicle)]. [A person "operates" a vehicle when the person manipulates or activates any of the controls of a vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was [(operating) (in physical control of)] [(a snowmobile) (an all-terrain vehicle)], the defendant's alcohol concentration was 0.08 or more. The defendant took a (breath) (blood) (urine) test to determine alcohol concentration. The State has introduced evidence of the testing method used and the results of the test that was administered to the defendant. You must evaluate the reliability of the testing method and the test results in determining whether the defendant's alcohol concentration was 0.08 or more at the time the defendant was (operating) (in physical control of) the (snowmobile) (all-terrain vehicle).

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven be-

yond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.88

OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WITH AN ALCOHOL CONCENTRATION OF 0.08 OR MORE AS MEASURED WITHIN TWO HOURS OF THE TIME OF DRIVING—DEFINED

Under Minnesota law, whoever [(operates) (is in physical control of)] [(a snowmobile) (an all-terrain vehicle)] within this state or on the ice of any boundary water, when the person's alcohol concentration as measured within two hours of the time of operating is 0.08 or more, is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 1b(5); M.S.A. § 84.91, subd. 1(c).

CRIMJIG 29.89

OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WITH AN ALCOHOL CONCENTRATION OF 0.08 OR MORE AS MEASURED WITHIN TWO HOURS OF THE TIME OF DRIVING—ELEMENTS

The elements of [(operating) (being in physical control of)] [(a snowmobile) (an all-terrain vehicle)] with an alcohol concentration of 0.08 or more as measured within two hours of the time of (operating) (being in physical control) are:

First, the defendant [(operated) (was in physical control of)] [(a snowmobile) (an all-terrain vehicle)]. [A person "operates" a vehicle when the person manipulates or activates any of the controls of a vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, within two hours of the time the defendant [(operated) (was in physical control of)] [(a snowmobile) (an all-terrain vehicle)], the defendant's alcohol concentration was 0.08 or more. The defendant took a (breath) (blood) (urine) test to determine alcohol concentration. The State has introduced evidence of the testing method used and the results of the test that was administered to the defendant. You must evaluate the reliability of the testing method and the test results in determining whether the defendant's alcohol concentration was 0.08 or more within two hours of the time of operating.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [_____], the defendant's act took place on (or about) __________ in __________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.90

OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WHILE UNDER THE INFLUENCE OF A HAZARDOUS SUBSTANCE—DEFINED

Under Minnesota law, whoever [(operates) (is in physical control of)] [(a snowmobile) (an all-terrain vehicle)] within this state or on the ice of any boundary water, when the person is knowingly under the influence of a hazardous substance that affects the nervous system, brain, or muscles so as to substantially impair the person's ability to [(drive) (operate)] [(a snowmobile) (an all-terrain vehicle)], is guilty of a crime.

COMMENT

M.S.A. 160A.20, subd. 1b(3); M.S.A. § 84.91, subd. 1(3).

CRIMJIG 29.91

OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WHILE UNDER THE INFLUENCE OF A HAZARDOUS SUBSTANCE—ELEMENTS

The elements of [(operating) (being in physical control of)] [(a snowmobile) (an all-terrain vehicle)] while under the influence of a hazardous substance[1] are:

First, the defendant [(operated) (was in physical control of)] [(a snowmobile) (an all-terrain vehicle)]. [A person "operates" a vehicle when the person manipulates or activates any of the controls of a vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was [(operating) (in physical control of)] [(a snowmobile) (an all-terrain vehicle)], the defendant was knowingly under the influence of a hazardous substance that affects the nervous system, brain, or muscles that substantially impaired the defendant's ability to [(drive) (operate)] [(the snowmobile) (the all-terrain vehicle)]. (________ is a hazardous substance.) [As part of this element of the offense, the State must prove beyond a reasonable doubt that the substance was, in fact, ________.]

Third, the defendant was substantially impaired in (his) (her) ability to [(drive) (operate) (be in physical control of)] [(a snowmobile) (an all-terrain vehicle)] due to the influence of a hazardous substance.

It is not unlawful to ingest a hazardous substance and then

29.91

[1] M.S.A. § 609.21, subd. 5, defines a "hazardous substance" as any chemical or chemical compound that is listed as a hazardous substance in rules adopted under Chapter 152. Through a series of further references, one can find the list of hazardous substances at 49 C.F.R. § 172.101, Appendix A.

[(operate) (be in physical control of)] [(a snowmobile) (an all-terrain vehicle)]. The prohibition is against [(operating) (being in physical control of)] [(a snowmobile) (an all-terrain vehicle)] while under the influence of a hazardous substance.

There is no set standard as to the quantity of a hazardous substance a person must ingest before being regarded as "under the influence." When a person is so affected by a hazardous substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is under the influence of a hazardous substance.

If a person ingests a hazardous substance and is not thereby influenced in the operation of a vehicle, there is no violation of the statute. If, as a result of ingesting the hazardous substance, the person's ability or capacity to (operate) (be in physical control of) a vehicle is impaired, the statute has been violated.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Fourth] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.92

OPERATING A MOTORBOAT WHILE UNDER THE INFLUENCE OF ALCOHOL—DEFINED

Under Minnesota law, whoever (operates) (is in physical control of) a motorboat in operation on the water, when the person is under the influence of alcohol, is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 1a(1); M.S.A. § 86B.331, subd. 1(c).

CRIMJIG 29.93

OPERATING A MOTORBOAT WHILE UNDER THE INFLUENCE OF ALCOHOL—ELEMENTS

The elements of (operating) (being in physical control of) a motorboat while under the influence of alcohol are:

First, the defendant (operated) (was in physical control of) a motorboat in operation on the water. [A person "operates" a motorboat by navigating or otherwise using the motorboat.] [A person is in "physical control" of a motorboat when the person is present in a motorboat and is in a position to either direct the operation of the motorboat or keep the motorboat in restraint.] [A "motorboat" is a watercraft propelled in any manner by machinery, including a watercraft temporarily equipped with a detachable motor.] [A motorboat is not in operation if it is anchored, beached, or securely fastened to a dock or other permanent mooring.]

Second, at the time the defendant was (operating) (in physical control of) a motorboat, the defendant was under the influence of alcohol.

It is not unlawful to drink alcoholic beverages and then (operate) (be in physical control of) a motorboat. The prohibition is against (operating) (being in physical control of) a motorboat while under the influence of alcohol.

There is no set standard as to the quantity of alcohol a person must consume before being regarded as "under the influence of alcohol." When a person is so affected by an alcoholic beverage that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is under the influence of alcohol.

If a person consumes an alcoholic beverage and is not thereby influenced in the operation of a motorboat, there is no violation of the statute. If, as a result of consuming an alcoholic beverage, the person's ability or capacity to (operate) (be in physical control of) a motorboat is impaired, the statute has been violated.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.94

OPERATING A MOTORBOAT WHILE UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE—DEFINED

Under Minnesota law, whoever (operates) (is in physical control of) a motorboat in operation on the water, when the person is under the influence of a controlled substance, is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 1a(2); M.S.A. § 86B.331, subd. 1(c).

CRIMJIG 29.95

OPERATING A MOTORBOAT WHILE UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE—ELEMENTS

The elements of (operating) (being in physical control of) a motorboat while under the influence of a controlled substance are:

First, the defendant (operated) (was in physical control of) a motorboat in operation on the water. [A person "operates" a motorboat by navigating or otherwise using the motorboat.] [A person is in "physical control" of a motorboat when the person is present in a motorboat and is in a position to either direct the operation of the motorboat or keep the motorboat in restraint.] [A "motorboat" is a watercraft propelled in any manner by machinery, including a watercraft temporarily equipped with a detachable motor.] [A motorboat is not in operation if it is anchored, beached, or securely fastened to a dock or other permanent mooring.]

Second, at the time the defendant was (operating) (in physical control of) a motorboat, the defendant was under the influence of a controlled substance. ________ is a controlled substance. [As part of this element of the offense, the State must prove beyond a reasonable doubt that the substance was, in fact, ________.]

It is not unlawful to ingest a controlled substance and then (operate) (be in physical control of) a motorboat. The prohibition is against (operating) (being in physical control of) a motorboat while under the influence of a controlled substance.

There is no set standard as to the quantity of controlled substance a person must ingest before being regarded as "under the influence." When a person is so affected by a controlled substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is under the influence of a controlled substance.

If a person ingests a controlled substance and is not thereby influenced in the operation of a motorboat, there is no violation of the statute. If, as a result of ingesting a controlled substance, the person's ability or capacity to (operate) (be in physical control of) a motorboat is impaired, the statute has been violated.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.96

OPERATING A MOTORBOAT WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR A HAZARDOUS SUBSTANCE—DEFINED

Under Minnesota law, whoever (operates) (is in physical control of) a motorboat in operation on the water, when the person is under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (a hazardous substance that affects the nervous system, brain, or muscles), is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 1a(4); M.S.A. § 86B.331, subd. 1(c).

CRIMJIG 29.97

OPERATING A MOTORBOAT WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR A HAZARDOUS SUBSTANCE—ELEMENTS

The elements of (operating) (being in physical control of) a motorboat while under the influence of a combination of (alcohol) (and) (a controlled substance) are:

First, the defendant (operated) (was in physical control of) a motorboat in operation on the water. [A person "operates" a motorboat by navigating or otherwise using the motorboat.] [A person is in "physical control" of a motorboat when the person is present in a motorboat and is in a position to either direct the operation of the motorboat or keep the motorboat in restraint.] [A "motorboat" is a watercraft propelled in any manner by machinery, including a watercraft temporarily equipped with a detachable motor.] [A motorboat is not in operation if it is anchored, beached, or securely fastened to a dock or other permanent mooring.]

Second, at the time the defendant was (operating) (in physical control of) a motorboat, the defendant was under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (a hazardous substance[1] that affects the nervous system, brain, or muscles). (________ is a controlled substance) (and) (________ is a hazardous substance).[2] [As part of this element of the offense, the State must prove beyond a reasonable doubt that the substance was, in fact, ________.]

It is not unlawful to (drink alcoholic beverages) or (ingest a controlled substance) or (ingest a hazardous substance) and then (operate) (be in physical control of) a motorboat. The prohibition

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29.97

[1] M.S.A. § 609.21, subd. 5, defines a "hazardous substance" as any chemical or chemical compound that is listed as a hazardous substance in rules adopted under Chapter 182. Through a series of further references, one can find the list of hazardous substances at 49 C.F.R. § 172.101, Appendix A.

[2] Whether a substance is a controlled substance or hazardous substance is to be determined by the court.

is against (operating) (being in physical control of) a motorboat while under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (a hazardous substance).

There is no set standard as to the quantity of (alcohol) (and) (a controlled substance) (and) (a hazardous substance) a person must ingest before being regarded as "under the influence." When a person is so affected by the combination of (an alcoholic beverage) (and) (a controlled substance) (and) (a hazardous substance) that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.98

OPERATING A MOTORBOAT WITH AN ALCOHOL CONCENTRATION OF 0.08 OR MORE—DEFINED

Under Minnesota law, whoever (operates) (is in physical control of) a motorboat in operation on the water, when the person's alcohol concentration is 0.08 or more, is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 1a(5); M.S.A. § 86B.331, subd. 1(c).

CRIMJIG 29.99

OPERATING A MOTORBOAT WITH AN ALCOHOL CONCENTRATION OF 0.08 OR MORE—ELEMENTS

The elements of (operating) (being in physical control of) a motorboat with an alcohol concentration of 0.08 or more are:

First, the defendant (operated) (was in physical control of) a motorboat in operation on the water. [A person "operates" a motorboat by navigating or otherwise using the motorboat.] [A person is in "physical control" of a motorboat when the person is present in a motorboat and is in a position to either direct the operation of the motorboat or keep the motorboat in restraint.] [A "motorboat" is a watercraft propelled in any manner by machinery, including a watercraft temporarily equipped with a detachable motor.] [A motorboat is not in operation if it is anchored, beached, or securely fastened to a dock or other permanent mooring.]

Second, at the time the defendant was (operating) (in physical control of) a motorboat, the defendant's alcohol concentration was 0.08 or more. The defendant took a (breath) (blood) (urine) test to determine alcohol concentration. The State has introduced evidence of the testing method used and the results of the test that was administered to the defendant. You must evaluate the reliability of the testing method and the test results in determining whether the defendant's alcohol concentration was 0.08 or more at the time the defendant was (operating) (in physical control of) the motorboat.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find

that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.100

OPERATING A MOTORBOAT WITH AN ALCOHOL CONCENTRATION OF 0.08 OR MORE AS MEASURED WITHIN TWO HOURS OF THE TIME OF OPERATION—DEFINED

Under Minnesota law, whoever (operates) (is in physical control of) a motorboat in operation on the water, when the person's alcohol concentration as measured within two hours of the time of operation is 0.08 or more, is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 1a(5); M.S.A. § 86B.331, subd. 1(c).

CRIMJIG 29.101

OPERATING A MOTORBOAT WITH AN ALCOHOL CONCENTRATION OF 0.08 OR MORE AS MEASURED WITHIN TWO HOURS OF THE TIME OF OPERATION—ELEMENTS

The elements of (operating) (being in physical control of) a motorboat with an alcohol concentration of 0.08 or more as measured within two hours of the time of (operating) (being in physical control) are:

First, the defendant (operated) (was in physical control of) a motorboat in operation on the water. [A person "operates" a motorboat by navigating or otherwise using the motorboat.] [A person is in "physical control" of a motorboat when the person is present in a motorboat and is in a position to either direct the operation of the motorboat or keep the motorboat in restraint.] [A "motorboat" is a watercraft propelled in any manner by machinery, including a watercraft temporarily equipped with a detachable motor.] [A motorboat is not in operation if it is anchored, beached, or securely fastened to a dock or other permanent mooring.]

Second, within two hours of the time the defendant (operated) (was in physical control of) a motorboat, the defendant's alcohol concentration was 0.08 or more. The defendant took a (breath) (blood) (urine) test to determine alcohol concentration. The State has introduced evidence of the testing method used and the results of the test that was administered to the defendant. You must evaluate the reliability of the testing method and the test results in determining whether the defendant's alcohol concentration was 0.08 or more within two hours of the time of operation of the motorboat.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.102

OPERATING A MOTORBOAT WHILE UNDER THE INFLUENCE OF HAZARDOUS SUBSTANCE—DEFINED

Under Minnesota law, whoever (operates) (is in physical control of) a motorboat in operation on the water, when the person is knowingly under the influence of a hazardous substance that affects the nervous system, brain, or muscles so as to substantially impair the person's ability to drive or operate the motorboat, is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 1b(3); M.S.A. § 86B.331, subd. 1(c).

CRIMJIG 29.103

OPERATING A MOTORBOAT WHILE UNDER THE INFLUENCE OF HAZARDOUS SUBSTANCE—ELEMENTS

The elements of (operating) (being in physical control of) a motorboat while under the influence of a hazardous substance[1] are:

First, the defendant (operated) (was in physical control of) a motorboat in operation on the water. [A person "operates" a motorboat by navigating or otherwise using the motorboat.] [A person is in "physical control" of a motorboat when the person is present in a motorboat and is in a position to either direct the operation of the motorboat or keep the motorboat in restraint.] [A "motorboat" is a watercraft propelled in any manner by machinery, including a watercraft temporarily equipped with a detachable motor.] [A motorboat is not in operation if it is anchored, beached, or securely fastened to a dock or other permanent mooring.]

Second, at the time the defendant was (operating) (in physical control of) a motorboat, the defendant was knowingly under the influence of a hazardous substance that affects the nervous system, brain, or muscles. ________ is a hazardous substance. [As part of this element of the offense, the State must prove beyond a reasonable doubt that the substance was, in fact, ________.]

Third, the defendant was substantially impaired in (his) (her) ability to (operate) (drive) (be in physical control of) the motorboat due to the influence of the hazardous substance.

It is not unlawful to ingest a hazardous substance and then (operate) (be in physical control of) a motorboat. The prohibition

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29.103

[1] M.S.A. § 609.21, subd. 5, defines a "hazardous substance" as any chemical or chemical compound that is listed as a hazardous substance in rules adopted under Chapter 182. Through a series of further references, one can find the list of hazardous substances at 49 C.F.R. § 172.101, Appendix A.

is against (operating) (being in physical control of) a motorboat while under the influence of a hazardous substance.

There is no set standard as to the quantity of a hazardous substance a person must ingest before being regarded as "under the influence." When a person is so affected by a hazardous substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is under the influence of a hazardous substance.

If a person ingests a hazardous substance and is not thereby influenced in the operation of a motorboat, there is no violation of the statute. If, as a result of ingesting the hazardous substance, the person's ability or capacity to (operate) (be in physical control of) a motorboat is impaired, the statute has been violated.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Fourth] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.104

UNDERAGE CONSUMPTION—MOTOR VEHICLE—DEFINED

Under Minnesota law, whoever is under 21 years of age and drives or operates a motor vehicle while consuming alcoholic beverages, or after having consumed alcoholic beverages while there is physical evidence of the consumption present in the person's body, is guilty of a crime.

COMMENT

M.S.A. § 169A.33.

CRIMJIG 29.105

UNDERAGE CONSUMPTION—MOTOR VEHICLE—ELEMENTS

The elements of underage consumption are:

First, the defendant was under the age of 21 years.

Second, the defendant drove or operated a motor vehicle. [A person "drives" a motor vehicle when the person exercises physical control over the speed and direction of a motor vehicle while it is in motion.] [A person "operates" a motor vehicle when the person manipulates or activates any of the controls of a motor vehicle necessary to put the vehicle into motion.]

Third, at the time of driving or operating the vehicle, the defendant was consuming alcoholic beverages or, after having consumed alcoholic beverages, had physical evidence of the consumption present in the body.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.106

OPERATING AN OFF-HIGHWAY MOTORCYCLE/ OFF-ROAD VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL—DEFINED

Under Minnesota law, whoever [(operates) (is in physical control of)] [(an off-road motorcycle) (an off-road vehicle)] within this state or on the ice of any boundary water, when the person is under the influence of alcohol, is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 1c(1); See M.S.A. § 84.771 and .787.

CRIMJIG 29.107

OPERATING AN OFF-HIGHWAY MOTORCYCLE/ OFF-ROAD VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL—ELEMENTS

The elements of [(operating) (being in physical control of)] [(an off-road motorcycle) (an off-road vehicle)] while under the influence of alcohol are:

First, the defendant [(operated) (was in physical control of)] [(an off-road motorcycle) (an off-road vehicle)] [A person "operates" a vehicle when the person manipulates or activates any of the controls of a vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was [(operating) (in physical control of)] [(an off-road motorcycle) (an off-road vehicle)], the defendant was under the influence of alcohol.

It is not unlawful to drink alcoholic beverages and then [(operate) (be in physical control of)] [(an off-road motorcycle) (an off-road vehicle)]. The prohibition is against [(operating) (being in physical control of)] [(an off-road motorcycle) (an off-road vehicle)] while under the influence of alcohol.

There is no set standard as to the quantity of alcohol a person must consume before being regarded as "under the influence of alcohol." When a person is so affected by an alcoholic beverage that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is under the influence of alcohol.

If a person consumes an alcoholic beverage and is not thereby influenced in the operation of a vehicle, there is no violation of the statute. If, as a result of consuming an alcoholic beverage, the person's ability or capacity to [(operate) (be in physical control of)] [(an off-road motorcycle) (an off-road vehicle)] is impaired, the statute has been violated.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.108

OPERATING AN OFF-HIGHWAY MOTORCYCLE/ OFF-ROAD VEHICLE WHILE UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE—DEFINED

Under Minnesota law, whoever [(operates) (is in physical control of)] [(an off-highway motorcycle) (off-road vehicle)] within this state or on the ice of any boundary water, when the person is under the influence of a controlled substance, is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 1c(2); See M.S.A. § 84.771 and .787.

CRIMJIG 29.109

OPERATING AN OFF-HIGHWAY MOTORCYCLE/ OFF-ROAD VEHICLE WHILE UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE— ELEMENTS

The elements of [(operating) (being in physical control of)] [(an off-highway motorcycle) (off-road vehicle)] while under the influence of a controlled substance are:

First, the defendant [(operated) (was in physical control of)] [(an off-highway motorcycle) (off-road vehicle)]. [A person "operates" a vehicle when the person manipulates or activates any of the controls of a vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was [(operating) (in physical control of)] [(an off-highway motorcycle) (off-road vehicle)], the defendant was under the influence of a controlled substance. ________ is a controlled substance. [As part of this element of the offense, the State must prove beyond a reasonable doubt that the substance was, in fact, ________.]

It is not unlawful to ingest a controlled substance and then [(operate) (be in physical control of)] [(an off-highway motorcycle) (off-road vehicle)]. The prohibition is against [(operating) (being in physical control of)] [(an off-highway motorcycle) (off-road vehicle)] while under the influence of a controlled substance.

There is no set standard as to the quantity of a controlled substance a person must ingest before being regarded as "under the influence." When a person is so affected by a controlled substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is under the influence of a controlled substance.

If a person ingests a controlled substance and is not thereby influenced in the operation of a vehicle, there is no violation of the statute. If, as a result of ingesting a controlled substance, the person's ability or capacity to [(operate) (be in physical control of)] [(an off-highway motorcycle) (off-road vehicle)] is impaired, the statute has been violated.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.110

OPERATING AN OFF-HIGHWAY MOTORCYCLE/ OFF-ROAD VEHICLE WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR HAZARDOUS SUBSTANCE—DEFINED

Under Minnesota law, whoever [(operates) (is in physical control of)] [(an off-highway motorcycle) (off-road vehicle)] within this state or on the ice of any boundary water, when the person is under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (a hazardous substance that affects the nervous system, brain, or muscles), is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 1c(4); See M.S.A. § 84.771 and .787.

CRIMJIG 29.111

OPERATING AN OFF-HIGHWAY MOTORCYCLE/ OFF-ROAD VEHICLE WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR HAZARDOUS SUBSTANCE—ELEMENTS

The elements of [(operating) (being in physical control of)] [(an off-highway motorcycle) (off-road vehicle)] while under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (hazardous substance[1]) are:

First, the defendant [(operated) (was in physical control of)] [(an off-highway motorcycle) (off-road vehicle)]. [A person "operates" a vehicle when the person manipulates or activates any of the controls of a vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was [(operating) (in physical control of)] [(an off-highway motorcycle) (off-road vehicle)], the defendant was under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (a hazardous substance that affects the nervous system, brain, or muscles). (________ is a controlled substance) (and) (________ is a hazardous substance).[2]

It is not unlawful to (drink alcoholic beverages) or (ingest a controlled substance) or (ingest a hazardous substance) and then [(operate) (be in physical control of)] [(an off-highway motorcycle) (off-road vehicle)]. The prohibition is against [(operating)

29.111

[1] Whether a substance is a controlled substance or hazardous substance is to be determined by the court.

[2] M.S.A. § 609.21, subd. 5, defines a "hazardous substance" as any chemical or chemical compound that is listed as a hazardous substance in rules adopted under Chapter 182. Through a series of further references, one can find the list of hazardous substances at 49 C.F.R. § 172.101, Appendix A.

(being in physical control of)] [(an off-highway motorcycle) (off-road vehicle)] while under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (a hazardous substance).

There is no set standard as to the quantity of (alcohol) (and) (a controlled substance) (and) (a hazardous substance) a person must ingest before being regarded as "under the influence." When a person is so affected by a combination of (an alcoholic beverage) (a controlled substance) that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.112

OPERATING AN OFF-HIGHWAY MOTORCYCLE/ OFF-ROAD VEHICLE WITH AN ALCOHOL CONCENTRATION OF 0.08 OR MORE—DEFINED

Under Minnesota law, whoever [(operates) (is in physical control of)] [(an off-highway motorcycle) (off-road vehicle)] within this state or on the ice of any boundary water, when the person's alcohol concentration is 0.08 or more, is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 1c(5); See M.S.A. § 84.771 and .787.

CRIMJIG 29.113

OPERATING AN OFF-HIGHWAY MOTORCYCLE/ OFF-ROAD VEHICLE WITH AN ALCOHOL CONCENTRATION OF 0.08 OR MORE—ELEMENTS

The elements of [(operating) (being in physical control of)] [(an off-highway motorcycle) (off-road vehicle)] with an alcohol concentration of 0.08 or more are:

First, the defendant [(operated) (was in physical control of)] [(an off-highway motorcycle) (off-road vehicle)]. [A person "operates" a vehicle when the person manipulates or activates any of the controls of a vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was [(operating) (in physical control of)] [(an off-highway motorcycle) (off-road vehicle)], the defendant's alcohol concentration was 0.08 or more. The defendant took a (breath) (blood) (urine) test to determine alcohol concentration. The State has introduced evidence of the testing method used and the results of the test that was administered to the defendant. You must evaluate the reliability of the testing method and the test results in determining whether the defendant's alcohol concentration was 0.08 or more at the time the defendant was (operating) (in physical control of) the (snowmobile) (all-terrain vehicle).

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven be-

yond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.114

OPERATING AN OFF-HIGHWAY MOTORCYCLE/ OFF-ROAD VEHICLE WITH AN ALCOHOL CONCENTRATION OF 0.08 OR MORE AS MEASURED WITHIN TWO HOURS OF THE TIME OF DRIVING—DEFINED

Under Minnesota law, whoever [(operates) (is in physical control of)] [(an off-highway motorcycle) (off-road vehicle)] within this state or on the ice of any boundary water, when the person's alcohol concentration as measured within two hours of the time of operating is 0.08 or more, is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 1c(5); See M.S.A. § 84.771 and .787.

CRIMJIG 29.115

OPERATING AN OFF-HIGHWAY MOTORCYCLE/ OFF-ROAD VEHICLE WITH AN ALCOHOL CONCENTRATION OF 0.08 OR MORE AS MEASURED WITHIN TWO HOURS OF THE TIME OF DRIVING—ELEMENTS

The elements of [(operating) (being in physical control of)] [(an off-highway motorcycle) (off-road vehicle)] with an alcohol concentration of 0.08 or more as measured within two hours of the time of (operating) (being in physical control) are:

First, the defendant [(operated) (was in physical control of)] [(an off-highway motorcycle) (off-road vehicle)]. [A person "operates" a vehicle when the person manipulates or activates any of the controls of a vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, within two hours of the time the defendant [(operated) (was in physical control of)] [(an off-highway motorcycle) (off-road vehicle)], the defendant's alcohol concentration was 0.08 or more. The defendant took a (breath) (blood) (urine) test to determine alcohol concentration. The State has introduced evidence of the testing method used and the results of the test that was administered to the defendant. You must evaluate the reliability of the testing method and the test results in determining whether the defendant's alcohol concentration was 0.08 or more within two hours of the time of operating.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.116

OPERATING AN OFF-HIGHWAY MOTORCYCLE/ OFF-ROAD VEHICLE WHILE UNDER THE INFLUENCE OF A HAZARDOUS SUBSTANCE— DEFINED

Under Minnesota law, whoever [(operates) (is in physical control of)] [(an off-highway motorcycle) (off-road vehicle)] within this state or on the ice of any boundary water, when the person is knowingly under the influence of a hazardous substance that affects the nervous system, brain, or muscles, so as to substantially impair the person's ability to (operate) (be in physical control of) the (off-highway motorcycle) (off-road vehicle) is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 1c(3); See M.S.A. 84.771 and .787.

CRIMJIG 29.117

OPERATING AN OFF-HIGHWAY MOTORCYCLE/ OFF-ROAD VEHICLE WHILE UNDER THE INFLUENCE OF A HAZARDOUS SUBSTANCE—ELEMENTS

The elements of [(operating) (being in physical control of)] [(an off-highway motorcycle) (off-road vehicle)] while under the influence of a hazardous substance[1] are:

First, the defendant [(drove)(operated) (was in physical control of)] [(an off-highway motorcycle) (off-road vehicle)]. [A person "operates" a vehicle when the person manipulates or activates any of the controls of a vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was [(driving) (operating) (in physical control of)] [(an off-highway motorcycle) (off-road vehicle)], the defendant was knowingly under the influence of a hazardous substance that affects the nervous system, brain, or muscles. (________ is a hazardous substance.) [As part of this element of the offense, the State must prove beyond a reasonable doubt that the substance was, in fact, ________.]

Third, the defendant was substantially impaired in (his) (her) ability to [(drive) (operate) (be in physical control of)] [(an off-highway motorcycle) (off-road vehicle)] due to the influence of a hazardous substance.

There is no set standard as to the quantity of a hazardous substance a person must ingest before being regarded as "under

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29.117

[1] M.S.A. § 609.21, subd. 5, defines a "hazardous substance" as any chemical or chemical compound that is listed as a hazardous substance in rules adopted under Chapter 182. Through a series of further references, one can find the list of hazardous substances at 49 C.F.R. § 172.101, Appendix A.

the influence." When a person is so affected by a hazardous substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is under the influence of a hazardous substance.

If a person ingests a hazardous substance and is not thereby influenced in the operation of a vehicle, there is no violation of the statute. If, as a result of ingesting the hazardous substance, the person's ability or capacity to (drive) (operate) (be in physical control of) a vehicle is impaired, the statute has been violated.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Fourth] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.118

OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WHILE UNDER THE INFLUENCE THE INFLUENCE OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE I OR II—DEFINED

Under Minnesota law, whoever [(operates) (is in physical control of)] [(a snowmobile) (an all-terrain vehicle)] within this state or on the ice of any boundary water, when the person is under the influence of any amount of a controlled substance listed in Schedule I or II, other than marijuana or tetrahydrocannabinols, is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 1b(6).

CRIMJIG 29.119

OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WHILE UNDER THE INFLUENCE THE INFLUENCE OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE I OR II—ELEMENTS

The elements of [(operating) (being in physical control of)] [(a snowmobile) (an all-terrain vehicle)] while under the influence of any amount of a controlled substance listed in Schedule I or II, other than marijuana or tetrahydrocannabinols are:

First, the defendant [(operated) (was in physical control of)] [(a snowmobile) (an all-terrain vehicle)]. [A person "operates" a vehicle when the person manipulates or activates any of the controls of a vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was [(operating) (in physical control of)] [(a snowmobile) (an all-terrain vehicle)]., the defendant's body contained any amount of (a controlled substance listed in Schedule I or II or its metabolites, other than marijuana or tetrahydrocannabinols).

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [_____], the defendant's act took place on (or about) _________ in _________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.120

OPERATING A MOTORBOAT WHILE UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE I OR II—DEFINED

Under Minnesota law, whoever (operates) (is in physical control of) a motorboat in operation on the water, when the person is under the influence of any amount of a controlled substance listed in Schedule I or II, other than marijuana or tetrahydrocannabinols, is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 1a(6).

CRIMJIG 29.121

OPERATING A MOTORBOAT WHILE UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE I OR II—ELEMENTS

The elements of (operating) (being in physical control of) a motorboat while under the influence of are:

First, the defendant (operated) (was in physical control of) a motorboat in operation on the water. [A person "operates" a motorboat by navigating or otherwise using the motorboat.] [A person is in "physical control" of a motorboat when the person is present in a motorboat and is in a position to either direct the operation of the motorboat or keep the motorboat in restraint.] [A "motorboat" is a watercraft propelled in any manner by machinery, including a watercraft temporarily equipped with a detachable motor.] [A motorboat is not in operation if it is anchored, beached, or securely fastened to a dock or other permanent mooring.]

Second, at the time the defendant was (operating) (in physical control of) a motorboat, the defendant's body contained any amount of (a controlled substance listed in Schedule I or II or its metabolites, other than marijuana or tetrahydrocannabinols).

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.122

OPERATING AN OFF-HIGHWAY MOTORCYCLE/ OFF-ROAD VEHICLE WHILE UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE I OR II—DEFINED

Under Minnesota law, whoever [(operates) (is in physical control of)] [(an off-road motorcycle) (an off-road vehicle)] within this state or on the ice of any boundary water, when the person is under the influence of any amount of a controlled substance listed in Schedule I or II, other than marijuana or tetrahydrocannabinols, is guilty of a crime.

COMMENT

M.S.A. § 169A.20, subd. 1c(6).

CRIMJIG 29.123

OPERATING AN OFF-HIGHWAY MOTORCYCLE/ OFF-ROAD VEHICLE WHILE UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE I OR II—ELEMENTS

The elements of [(operating) (being in physical control of)] [(an off-road motorcycle) (an off-road vehicle)] while under the influence of alcohol are:

First, the defendant [(operated) (was in physical control of)] [(an off-road motorcycle) (an off-road vehicle)] [A person "operates" a vehicle when the person manipulates or activates any of the controls of a vehicle necessary to put the vehicle into motion.] [A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was [(operating) (in physical control of)] [(an off-road motorcycle) (an off-road vehicle)], the defendant's body contained any amount of (a controlled substance listed in Schedule I or II or its metabolites, other than marijuana or tetrahydrocannabinols).

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under State v. Davidson, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

[Third] [_____], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CHAPTER 30

RICO (RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS)

Table of Instructions

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CRIMJIG 30.01

CONCEALING CRIMINAL PROCEEDS—DEFINED

Under Minnesota law, whoever conducts a transaction involving a monetary instrument or instruments with a value exceeding $5000, and knows or has reason to know that the monetary instrument or instruments represent the proceeds of or are derived from the proceeds of the commission of (________) (a felony),[1] is guilty of a crime.

30.01

[1] The statute provides that the proceeds derive from the commission of a felony under M.S.A. Chapter 609 or 152, or an offense in another jurisdiction that would have been a felony under Chapter 609 or 152 if committed in Minnesota. The court should

COMMENT

M.S.A. § 609.496.

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give the definition and elements of the alleged felony using the appropriate CRIMJIGs.

CRIMJIG 30.02

CONCEALING CRIMINAL PROCEEDS—ELEMENTS

The elements of concealing criminal proceeds are:

First, the defendant conducted a transaction involving (a) monetary instrument(s). A "monetary instrument" means (United States currency and coin) (the currency and coin of a foreign country) (bank check) (cashier's check) (traveler's check) (money order) (stock) (investment security) (negotiable instrument in bearer form or otherwise in the form by which title to the instrument passes upon delivery) (gold, silver, or platinum bullion or coins) (diamonds, emeralds, rubies, or sapphires).

Second, the transaction involved (a) monetary instrument(s) that exceeded $5,000 in value.

Third, the defendant knew or had reason to know that the monetary instrument(s) (represented the proceeds of) (are derived from the proceeds of) the commission of ________.[1]

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.496.

30.02

[1] The crime(s) alleged in the complaint. Although the statute does not require that the defendant be convicted of the underlying felony, it is appropriate to instruct the jury in its definition and elements.

CRIMJIG 30.03

ENGAGING IN BUSINESS OF CONCEALING CRIMINAL PROCEEDS—DEFINED

Under Minnesota law, whoever knowingly (initiates) (organizes) (plans) (finances) (directs) (manages) (supervises) (otherwise engages in) a business that has as a primary or secondary purpose the concealing of money or property that was gained as a direct result of the commission of ________[1] is guilty of a crime.

COMMENT

M.S.A. § 609.497.

30.03

[1] The felony offense or offenses charged under M.S.A. Chapter 609 or 152, or an offense in another jurisdiction that would have been a felony under Chapter 609 or 152 if committed in Minnesota.

CRIMJIG 30.04

ENGAGING IN BUSINESS OF CONCEALING CRIMINAL PROCEEDS—ELEMENTS

The elements of concealing criminal proceeds are:

First, the defendant knowingly (initiated) (organized) (planned) (financed) (directed) (managed) (supervised) (engaged in) (________) (a business).

Second, (________) (the business) had as a primary or secondary purpose concealing money or property that was gained as a direct result of the commission of ________.[1]

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

30.04

[1] The felony offense or offenses charged under M.S.A. Chapter 609 or 152, or an offense in another jurisdiction that would have been a felony under Chapter 609 or 152 if committed in Minnesota.

CRIMJIG 30.05

RACKETEERING—ASSOCIATION WITH AN ENTERPRISE—DEFINED

Under Minnesota law, whoever is employed by or associated with an enterprise and intentionally conducts or participates in the affairs of an enterprise by participating in a pattern of criminal activity is guilty of a crime.

COMMENT

M.S.A. § 609.903, subd. 1.

CRIMJIG 30.06

RACKETEERING—ASSOCIATION WITH AN ENTERPRISE—ELEMENTS

The elements of racketeering are:

First, there was an enterprise. An "enterprise" can be a (sole proprietorship) (partnership) (corporation) (trust) (________, a legal entity)[1] (union) (governmental entity) (association or group of persons associated in fact, although not a legal entity), and includes illicit as well as legitimate enterprises. You must find that each of three following characteristics applies to determine whether there was an enterprise:

> One, there was a common purpose among the individuals associated with the alleged enterprise;
>
> Two, the organization is ongoing and continuing, with its members functioning under some sort of decision-making arrangement or structure; and
>
> Three, the activities of the organization extend beyond the commission of the underlying criminal acts either to coordinate the underlying criminal acts into a pattern of criminal activity or to engage in other activities.

Second, the defendant was (employed by) (associated with) the enterprise.

Third, the defendant intentionally (conducted) (participated in) the affairs of the enterprise by participating in a pattern of criminal activity. A person "participates in a pattern of criminal activity" when the person is a principal with respect to conduct constituting at least three criminal acts included in the pattern, and two of the acts constitute felonies other than conspiracy.

A "criminal act" means conduct (constituting) (or an attempt

30.06

[1] M.S.A. § 609.902, subd. 3, uses the term "other legal entity," which may need further definition under the charged case.

or conspiracy to commit) ________. [Here insert the appropriate crime.[2]]

A "principal" is a person who personally engages in conduct constituting a violation, or who is criminally liable[3] for the conduct of another constituting a violation.

A "pattern of criminal activity" means conduct constituting three or more criminal acts that were committed within ten years of the commencement of the criminal prosecution, are neither isolated incidents nor so closely related and connected in point of time or circumstances of commission as to constitute a single criminal offense, and were (related to one another through a common scheme or plan or shared criminal purpose,) committed, solicited, requested, importuned, or intentionally aided by persons acting with the culpability required for the commission of the criminal acts and associated with or in an enterprise involved in those activities.

Fourth, the defendant's act(s) (or the act(s) of another for which the defendant is criminally liable) took place on (or about) ________ in ________ County.[4]

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.903, subd. 1(1).

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[2] Offenses that may constitute a racketeering violation are set forth in M.S.A. § 609.902, subd. 4. The court should state the charged offense or offenses and, if appropriate, state the definition and elements of the relevant jury instructions.

[3] An appropriate instruction under M.S.A. § 609.05 and related CRIMJIGs should be given.

[4] Because of the nature of a racketeering case, the venue element may have to be modified to reflect the specific charged case.

CRIMJIG 30.07

RACKETEERING—CONTROLLING AN INTEREST IN AN ENTERPRISE OR REAL ESTATE—DEFINED

Under Minnesota law, whoever acquires or maintains (an interest in or control of an enterprise) (interest in real property) by participating in a pattern of criminal activity is guilty of a crime.

COMMENT

M.S.A. § 609.903, subd. 1.

CRIMJIG 30.08

RACKETEERING—CONTROLLING AN INTEREST IN AN ENTERPRISE OR REAL ESTATE—ELEMENTS

The elements of racketeering are:

First, the defendant (acquired) (maintained) (an interest in) (control of) (an enterprise) (in real property).

[An "enterprise" is a (sole proprietorship) (partnership) (corporation) (trust) (________, a legal entity)[1] (union) (governmental entity) (association or group of persons associated in fact, although not a legal entity) (and includes illicit as well as legitimate enterprises).]

["Real property" means any real property or an interest in real property, including a lease of or mortgage on real property.]

Second, the defendant (acquired) (maintained) (the interest in) (control of) (the enterprise) (real estate) by participating in a pattern of criminal activity.

A person "participates in a pattern of criminal activity" when the person is a principal with respect to conduct constituting at least three criminal acts included in the pattern, and two of the acts constitute felonies other than conspiracy.

"A criminal act" means conduct (constituting) (or an attempt or a conspiracy to commit) ________.[2]

A "principal" is a person who personally engages in conduct constituting a violation, or who is criminally liable[3] for the conduct of another constituting a violation.

30.08

[1] M.S.A. § 609.902, subd. 3, uses the term "other legal entity," which may need further definition under the charged case.

[2] Offenses that may constitute a racketeering violation are set forth in M.S.A. § 609.902, subd. 4. The court should state the charged offense or offenses and, if appropriate, state the definition and elements of the relevant jury instructions.

[3] An appropriate instruction under M.S.A. § 609.05 and related CRIM-

"A pattern of criminal activity" means conduct constituting three or more criminal acts that were committed within ten years of the commencement of the criminal prosecution, are neither isolated incidents nor so closely related and connected in point of time or circumstances of commission as to constitute a single criminal offense, and were (related to one another through a common scheme or plan or shared criminal purpose,) committed, solicited, requested, importuned, or intentionally aided by persons acting with the culpability required for the commission of the criminal acts and associated with or in an enterprise involved in those activities.

Third, (some part of) the defendant's act(s) (or the act(s) of another for which the defendant is criminally liable) took place on (or about) ________ in ________ County.[4]

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.903, subd. 1(2).

JIG should be given.

[4] Offenses that may constitute a racketeering violation are set forth in M.S.A. § 609.902, subd. 4. The court should state the charged offense or offenses and, if appropriate, state the definition and elements of the relevant jury instructions.

CRIMJIG 30.09

RACKETEERING—INVESTMENT OF PROCEEDS—DEFINED

Under Minnesota law, whoever participates in a pattern of criminal activity and knowingly invests any proceeds derived from that conduct, or any proceeds derived from the investment or use of those proceeds in (an enterprise) (real property) is guilty of a crime.

COMMENT

M.S.A. § 609.903, subd. 1.

CRIMJIG 30.10

RACKETEERING—INVESTMENT OF PROCEEDS—ELEMENTS

The elements of racketeering are:

First, the defendant participated in a pattern of criminal activity.

A person "participates in a pattern of criminal activity" when the person is a principal with respect to conduct constituting at least three criminal acts included in the pattern, and two of the acts constitute felonies other than conspiracy.

A "criminal act" means conduct (constituting) (or an attempt or a conspiracy to commit) ________.[1]

A "principal" is a person who personally engages in conduct constituting a violation, or who is criminally liable[2] for the conduct of another constituting a violation.

A "pattern of criminal activity" means conduct constituting three or more criminal acts that were committed within ten years of the commencement of the criminal prosecution, are neither isolated incidents nor so closely related and connected in point of time or circumstances of commission as to constitute a single criminal offense, and were (related to one another through a common scheme or plan or shared criminal purpose,) committed, solicited, requested, importuned, or intentionally aided by persons acting with the culpability required for the commission of the criminal acts and associated with or in an enterprise involved in those activities.

30.10

[1] Offenses that may constitute a racketeering violation are set forth in M.S.A. § 609.902, subd. 4. The court should state the charged offense or offenses and, if appropriate, state the definition and elements of the relevant jury instructions.

[2] An appropriate instruction under M.S.A. § 609.05 and related CRIMJIG should be given.

Second, the defendant knowingly invested any (proceeds derived from that conduct) (proceeds derived from the investment or use of those proceeds) in (an enterprise) (real property).

[An enterprise is a (sole proprietorship) (partnership) (corporation) (trust) (________)[3] (union) (governmental entity) (association or group of persons associated in fact, although not a legal entity), and includes illicit as well as legitimate enterprises.]

["Real property" means any real property or an interest in real property, including a lease or mortgage of real property.]

Third, (some part of) the defendant's act(s) (or the act(s) of another for which the defendant is criminally liable) took place on (or about) ________ in ________ County.[4]

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.903, subd. 1(3).

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[3] M.S.A. § 609.902, subd. 3, uses the term "other legal entity," which may need further definition under the charged case.

[4] This element should be modified to reflect the specific charged case.

CRIMJIG 30.11

RACKETEERING—DEFENSES

The defendant has been charged with racketeering. It is a defense to this charge if the defendant's act(s) (was) (were) to

[1] purchase (________) (securities) on the open market with intent to make an investment and without the intent of controlling or participating in the control of the issuer or of assisting another to do so, if the (securities of the issuer) held by the defendant, members of the defendant's immediate family, and the defendant's accomplices[1] in a pattern of criminal activity do not amount in the aggregate to five percent of the outstanding securities of any one class, and do not confer either in law or in fact the power to elect one or more directors of the issuer.

[2] make a deposit in (________) (an account maintained in a savings and loan association) (any financial institution) that creates an ownership interest in (________) (that association) (that institution).[2]

[3] purchase nonvoting shares in a limited partnership with intent to make an investment and without the intent to control or participate in the control of the partnership.[3]

The burden is on the State to prove beyond a reasonable doubt that the defendant did not act in such circumstances and with such intent.

COMMENT

M.S.A. § 609.903, subd. 2.

30.11

[1] It may be appropriate to define who is an accomplice. See, e.g., CRIMJIG 12.03[5].

[2] *See* the Civil Jury Instruction Guides for the definitions of ownership interests, if necessary.

[3] *See* the Civil Jury Instruction Guides for the definition of a limited partnership, if necessary.

CRIMJIG 30.12

CRIME COMMITTED FOR GANG BENEFIT—DEFINED

Under Minnesota law, whoever commits (__________) (a crime) for the benefit of, at the direction of, or in association with or motivated by involvement with a criminal gang, with the intent to promote, further, or assist in criminal conduct by gang members, is guilty of a crime.

COMMENT

M.S.A. § 609.229, subd. 2.

CRIMJIG 30.13

CRIMES COMMITTED FOR GANG BENEFIT—ELEMENTS

The elements of committing a crime for gang benefit are:

First, the defendant committed (insert charge) which is a (felony) (gross misdemeanor) (misdemeanor). (The crime of ________[1] is as follows: (insert definition and elements of underlying crime).

Second, the defendant committed (________) (the crime) (for the benefit of) (at the direction of) (in association with) (motivated by involvement with) a criminal gang. A "criminal gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, that has as one of its primary activities the commission of one or more of the crimes of ________, has a common name or common identifying symbol, and includes members who individually or collectively engage in a pattern of criminal activity.

[Third, the victim of the crime is a child under 18 years of age.[2]]

Fourth, the defendant acted with the intent to promote, further, or assist in criminal conduct by gang members.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

30.13

[1] The crime alleged in the complaint. Although the statute does not require that the defendant be convicted of the underlying crime, the court should instruct the jury in its definition and its elements. *See State v. Charles*, 634 N.W.2d 425 (Minn. App. 2001).

[2] Use this element if the crime alleged in the complaint is a felony and the victim is under 18 years of age.

COMMENT

The Court of Appeals has held that the statute was not constitutionally overbroad. *State v. Mireles*, 619 N.W.2d 558 (Minn. App. 2000).

The trial court need not accept the defendant's stipulation that he is a gang member in a prosecution under the statute. The State needs to prove defendant aided and abetted a gang member for the benefit of a gang and that he had a knowing role in the crime, in order to prove that the alleged gang was a criminal gang, that the defendant was a member of that gang, and that he committed the crime for its benefit. *State v. Matelski*, 622 N.W.2d 826 (Minn. App. 2001).

The state is also required to prove that defendant committed the underlying crime. The court should be careful to instruct the jury on all essential elements of underlying crime. *See State v. Charles*, 634 N.W.2d 425 (Minn. App. 2001).

Under M.S.A. § 609.229, subd. 3, the penalty for conviction is dependent upon the nature of the underlying crime. If there is a question as to whether or not the underlying crime is a felony, gross misdemeanor, or misdemeanor, special interrogatories may be required on the verdict form, with appropriate additional instructions to the jury on the issue.

Gang Expert Testimony

To be admissible, gang expert testimony "must add precision or depth to the jury's ability to reach conclusion about matters that are not within its experience. Moreover, this testimony must be carefully monitored by the [district] court so that the testimony will not unduly influence the jury or dissuade it from exercising its independent judgment." *State v. DeShay*, 669 N.W.2d 878, 888 (Minn. 2003); Rules of Evidence, R. 702.

Although generally not favored, gang expert testimony is admissible if:

(1) it is more probative than prejudicial (Rules of Evidence, R. 403);

(2) the expert limits testimony to matters of first-hand knowledge (See *State v. Burrell*, 772 N.W.2d 459, 469; *State v. Cruz-Remirez*, 771 N.W.2d 497, 504 (Minn. 2009) relying on *State v. Mahkuk*, 763 N.W. 2d 675, 686 (Minn. 2007); State v. DeShay 669 N.W.2d 878, 888 (Minn. 2003)) and is not used to launder otherwise inadmissible hearsay evidence (*DeShay*, id. at 886);

(3) the expert limits testimony to the general criminal activities of the gang to aid the jury in determining the "benefit of the

gang" element (*State v. Cruz-Remirez*, 771 N.W.2d 497, 504 (Minn. 2009); *State v. Jackson*, 714 N.W.2d 681, 691 (Minn. 2006)) without expressing conclusory opinions (*State v. Jackson*, *supra*, at 692 (Minn. 2006));

(4) the expert's testimony is not merely cumulative of other testimony (*State v. Cruz Remirez*, 771 N.W.2d 497, 505 (Minn. 2009); State v. DeShay 669 N.W.2d 878, 888 (Minn. 2003); *State v. Lopez-Rio*, 669 N.W.2d 603, 612 (Minn. 2003));

(5) the expert's testimony is not used to prove gang membership of the specific defendant (*State v. Burrel,* 772 N.W.2d 459 at 469, *Cruz-Remirez*, 771 N.W.2d at 505; *Lopez-Rio*, 669 N.W.2d at 613; *Mankuk,* 736 N.W.2d at 686).

CHAPTER 31

GAMBLING CRIMES

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CRIMJIG

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CRIMJIG 31.01

SPORTS BOOKMAKING—DEFINED

Under Minnesota law, whoever intentionally receives, records, or forwards within a thirty-day period more than five bets or offers to bet that total more than $2,500 on any one or more sporting events is guilty of a crime.

COMMENT

M.S.A. § 609.75, subd. 7, and M.S.A. § 609.76, subd. 2.

CRIMJIG 31.02

SPORTS BOOKMAKING—ELEMENTS

The elements of sports bookmaking are:

First, the defendant intentionally (received) (recorded) (forwarded) more than five bets or offers to bet.

Second, the five or more bets or offers to bet were within a thirty-day period of time.

Third, the amount of the bets or offers to bet were for a total of more than $2,500.

Fourth, the subject of the bets or offers to bet concerned one or more sporting events.

Fifth, the defendant's act(s) took place [on (or about) ________] [between ________ and ________] in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 31.03

ILLEGAL BETTING—DEFINED

Under Minnesota law, whoever (places) (accepts) a bet on or off the premises of a licensed racetrack, other than a bet made with an approved pari-mutuel system, is guilty of a crime.

COMMENT

M.S.A. § 240.25, subd. 1.

CRIMJIG 31.04

ILLEGAL BETTING—ELEMENTS

The elements of illegal betting are:

First, the defendant (placed) (accepted) a bet. A "bet" is a bargain whereby the parties mutually agree to a gain or loss by one to the other of specified money, property, or benefit dependent upon chance, although the chance is accompanied by some element of skill.

Second, the bet was made on or off the premises of a licensed racetrack.

Third, the bet was not made with an approved pari-mutuel system. An "approved pari-mutuel system" is a system licensed by the State of Minnesota for the betting on horse races where those who bet on horses that finish in the position or positions for which bets are taken share in the total amounts bet, less deductions required or permitted by law.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See M.S.A. § 609.75, subd. 2 and subd. 3, for what does and does not constitute a bet. The Committee believes that, as written, M.S.A. § 240.25, subd. 1, could be used to prosecute betting cases that do not involve horseracing. However, the Committee also believes that the legislative intent, as reflected in the language of M.S.A. Chapter 240 and M.S.A. §§ 609.75 to 609.762, is to use this provision for horsetrack and horserace crimes, and this instruction has been drafted accordingly.

CRIMJIG 31.05

ILLEGAL LOTTERY SALE—UNLICENSED SALE—DEFINED

Under Minnesota law, whoever sells a ticket in the state lottery and is not a lottery retailer is guilty of a crime.

COMMENT

M.S.A. § 349A.12, subd. 3(a).

CRIMJIG 31.06

ILLEGAL LOTTERY SALE—UNLICENSED SALE—ELEMENTS

The elements of illegal lottery sale are:

First, the defendant sold to (________) (another) a ticket in the state lottery. A "ticket" is any tangible evidence issued by the lottery to prove participation in a lottery game.

Second, at the time of the sale, the defendant was not a lottery retailer. A "lottery retailer" is a person with whom the Director of the State Lottery has contracted to sell lottery tickets to the public.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 31.07

ILLEGAL LOTTERY SALE—ILLEGAL PRICE—DEFINED

Under Minnesota law, whoever is a lottery retailer and sells a lottery ticket for a price other than that set by the Director of the State Lottery is guilty of a crime.

COMMENT

M.S.A. § 349A.12, subd. 3(b).

CRIMJIG 31.08

ILLEGAL LOTTERY SALE—ILLEGAL PRICE—ELEMENTS

The elements of illegal lottery sale are:

First, the defendant was a lottery retailer. A "lottery retailer" is a person with whom the Director of the State Lottery has contracted to sell lottery tickets to the public.

Second, the defendant sold a lottery ticket to (________) (another person).

Third, the defendant sold the lottery ticket for a price other than the price set by the Director of the State Lottery.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 31.09

ILLEGAL LOTTERY GIFTS—DEFINED

Under Minnesota law, whoever is (a lottery retailer) (applying to be a lottery retailer) (a person applying for a contract with the Director of the State Lottery) (a person under contract with the Director of the State Lottery to supply goods or services to the Lottery Division of the Department of Gaming), and pays, gives, or makes any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service (excluding food or beverage) having an aggregate value of over $100 in any calendar year to (the Director of the State Lottery) (a Lottery Board member) (an employee of the Lottery Division) (a member of the immediate family residing in the same household as the Director of the State Lottery, a Lottery Board member, or an employee of the Lottery Division) is guilty of a crime.

COMMENT

M.S.A. § 349A.12, subd. 4.

CRIMJIG 31.10

ILLEGAL LOTTERY GIFTS—ELEMENTS

The elements of illegal lottery gifts are:

First, the defendant was (a lottery retailer) (applying to be a lottery retailer) (applying for a contract with the Director of the State Lottery) (under contract with the Director of the State Lottery to supply goods or services to the Lottery Division of the Department of Gaming). [A "lottery retailer" is a person with whom the Director of the State Lottery has contracted to sell lottery tickets to the public.]

Second, the defendant intentionally [(paid) (gave) (made)] [(an economic opportunity) (gift) (loan) (gratuity) (special discount) (favor) (hospitality) (service)], excluding food or beverage, to ________.

Third, at the time of the defendant's act, ________ was (the Director of the State Lottery) (a Lottery Board member) (an employee of the Lottery Division) (a member of the immediate family residing in the same household as the Lottery Director, a Lottery Board member, or an employee of the Lottery Division).

Fourth, the aggregate value of the (economic opportunity) (gift) (loan) (gratuity) (special discount) (favor) (hospitality) (service) was over $100 in a calendar year.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 31.11

SELLING OR REDEEMING LOTTERY TICKET TO PERSON UNDER THE AGE OF 18—DEFINED

Under Minnesota law, whoever is a lottery retailer and (sells) (redeems) a ticket in the state lottery to a person under the age of 18 years is guilty of a crime.

COMMENT

M.S.A. § 349A.12, subd. 2.

CRIMJIG 31.12

SELLING OR REDEEMING LOTTERY TICKET TO PERSON UNDER THE AGE OF 18—ELEMENTS

The elements of (selling) (redeeming) a lottery ticket to a person under the age of 18 are:

First, the defendant was a lottery retailer. A "lottery retailer" is a person with whom the Director of the State Lottery has contracted to sell lottery tickets to the public.

Second, the defendant sold a ticket in the state lottery to ________.

Third, ________ was under the age of 18 years.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 31.13

DEFENSE REGARDING INVESTIGATION OF STATUS OF PERSON TO WHOM LOTTERY TICKET IS SOLD

The defendant asserts a defense of reasonable and good faith reliance upon representations of identifications.

It is a defense in any criminal proceeding for the enforcement of the statutes related to the sale of lottery tickets to a person under the age of 18 for the defendant to establish by a preponderance of the evidence that the defendant reasonably and in good faith relied upon representations made by the person under the age of 18 by presentation of a (valid driver's license) (Minnesota identification card) (a valid passport, in the case of a foreign national). Such evidence shall be considered in determining whether the defendant is guilty, or not guilty, of intent to violate the statutes.

COMMENT

M.S.A. § 349A.12, subd. 2.

CRIMJIG 31.14

ILLEGAL POSSESSION OF PULLTABS AND TIP BOARDS—DEFINED

Under Minnesota law, whoever, other than a licensed distributor, sells, offers for sale, or possesses a pulltab or tip board deal not stamped in accordance with Minnesota Statutes is guilty of a crime.

COMMENT

M.S.A. § 349.2127, subd. 2.

CRIMJIG 31.15

ILLEGAL POSSESSION OF PULLTABS AND TIP BOARDS—ELEMENTS

The elements of illegal possession of (pulltabs) or (tip boards) are:

First, the defendant was not licensed as a (pulltab) (tip board) distributor under Minnesota Statutes.

Second, the defendant (sold) (offered for sale) (possessed) a (pulltab) (tip board) deal.

Third, the defendant intentionally (sold) (offered for sale) (possessed) the deal.

Fourth, the (pulltab) (tip board) deal did not bear Minnesota tax stamps.

[1] Fifth, the deal involved ten or fewer pulltabs or tipboards deals

[2] Fifth, the deal involved more than ten pulltabs or tipboard or a combination of pulltabs or tipboard deals.

Sixth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 31.16

ILLEGAL POSSESSION OF GAMBLING EQUIPMENT—DEFINED

Under Minnesota law, whoever, other than (a licensed manufacturer) (a licensed distributor) (a licensed organization) (an organization exempt from licensing), sells, offers for sale, or possesses gambling equipment not stamped in accordance with Minnesota Statutes is guilty of a crime.

COMMENT

M.S.A. § 349.2127, subd. 2(b).

CRIMJIG 31.17

ILLEGAL POSSESSION OF GAMBLING EQUIPMENT—ELEMENTS

The elements of illegal possession of gambling equipment are

First, the defendant was not (licensed as a manufacturer) (licensed as a gambling equipment distributor) (a licensed gambling organization) (exempt from the requirements of having a gambling license) under Minnesota Statutes.

Second, the defendant (sold) (offered for sale) (possessed) gambling equipment.

Third, the defendant intentionally (sold) (offered for sale) (possessed) gambling equipment.

Third, the gambling equipment did not bear Minnesota tax stamps.

[1] Fifth, the deal involved ten or fewer pulltabs or tipboards deals

[2] Fifth, the deal involved more than ten pulltabs or tipboard or a combination of pulltabs or tipboard deals.

Sixth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 31.18

COUNTERFEIT GAMBLING LICENSE OR STAMP—DEFINED

Under Minnesota law, whoever

[1] makes, alters, forges, or counterfeits any license or stamp provided for under Minnesota Statutes with the intent to defraud the State of Minnesota

[2] has in possession any forged, spurious, or altered stamps with the (intent to deprive) (intends the result of depriving) the state of a tax imposed by Minnesota Statutes

is guilty of a crime.

COMMENT

M.S.A. § 349.2127, subd. 1.

CRIMJIG 31.19

COUNTERFEIT GAMBLING LICENSE OR STAMP—ELEMENTS

The elements of gambling (license) (stamp) counterfeiting are:

[1] First, the defendant made, altered, forged, or counterfeited a ________.

Second, at the time of the act, the defendant intended to defraud the State of Minnesota. An "intent to defraud" is an intent to deceive another for the purpose of persuading another to part with property, or gaining some material advantage over another.

[2] First, the defendant possessed a forged, spurious, or altered stamp.

Second, at the time of the act, the defendant intended (to deprive) (the result of depriving) the State of Minnesota of a tax imposed under state gambling tax statutes.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 31.20

UNLAWFUL EXPENDITURES OF GAMBLING PROFITS—DEFINED

Under Minnesota law, whoever knowingly or with reason to know makes an unlawful expenditure of gross profits from lawful gambling is guilty of a crime.

COMMENT

M.S.A. § 349.2127, subd. 1a.

CRIMJIG 31.21

UNLAWFUL EXPENDITURES OF GAMBLING PROFITS—ELEMENTS

The elements of unlawful gambling expenditures are:

First, the defendant made an expenditure of gross profits from lawful gambling.

Second, the expenditure of gross profits was unlawful under Minnesota Statutes. Minnesota Statutes provide that gross profits from lawful gambling may only be spent on ________.[1]

Any expenditure for purposes other than those in which you have just been instructed is an unlawful expenditure.

Third, the defendant knew or had reason to know that the expenditure was unlawful.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant is guilty of one or more acts of unlawful expenditure within a period of six months, you have an additional issue to determine, and it will be put to you in the form of questions on the verdict form. The questions are: Was the total value of the expenditures more than $2,500? Was the total value of the expenditures more than $200, but not more than $2,500? Was the total value of the expenditures not more than $200? You will answer one of these questions "yes." If you have a reasonable doubt as to the answer, you should answer "yes" to the lesser of the amounts you believe were expended.]

31.21 for a definition of lawful expenditures.

[1] See M.S.A. § 349.12, subd. 25,

CRIMJIG 31.22

COUNTERFEIT PULLTABS, ETC.—DEFINED

Under Minnesota law, whoever alters, modifies, or counterfeits (pulltabs) (tip boards) (tip board tickets), or possesses altered, modified, or counterfeit (pulltabs) (tip boards) (tip board tickets), is guilty of a crime.

COMMENT

M.S.A. § 349.2127, subd. 2(c).

CRIMJIG 31.23

COUNTERFEIT PULLTABS, ETC.—ELEMENTS

The elements of counterfeit (pulltabs) (tip board) (tip board tickets) are:

First, the defendant intentionally

[1] altered, modified, or counterfeited (pulltabs) (tip boards) (tip board tickets).

[2] possessed, altered, modified, or counterfeited (pulltabs) (tip boards) (tip board tickets).

Second, the defendant's act took place on (or about) ________ in ________ County.

If you find that both of these elements have been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of a question on the verdict form. The question is: Was the total face value of the pulltabs, tip boards, or tip board tickets in excess of $200? For purposes of this question, the face value of all pulltabs, tip boards, and tip board tickets altered, modified, or counterfeited within a six-month period shall be aggregated. You will answer the question "yes" or "no." If you have a reasonable doubt as to the answer, you should answer the question "no."]

CRIMJIG 31.24

CHEATING—DEFINED

Under Minnesota law, whoever intentionally

[1] alters or misrepresents the outcome of a game or event on which wagers have been made, after the outcome is determined, but before the outcome is revealed to the players

[2] places, cancels, increases, or decreases a bet after acquiring knowledge, not available to other players, of the outcome of the game or subject of the bet, or of events affecting the outcome of the game or subject of the bet

[3] claims or collects money or anything of value from a game or authorized gambling establishment not won or earned from the game or authorized gambling establishment

[4] manipulates a gambling device or associated equipment to affect the outcome of the game or the number of plays or credits available on the game

[5] otherwise alters the elements of chance or methods of selection or criteria that determine the result of the game or amount or frequency of payment of the game

is guilty of a crime.

COMMENT

M.S.A. § 609.76, subd. 3.

CRIMJIG 31.25

CHEATING—ELEMENTS

The elements of cheating are:

[1] First, the defendant intentionally altered or misrepresented the outcome of a game or event on which wagers had been made.

Second, the defendant acted after the outcome was determined, but before the outcome was revealed to the players.

[2] First, the defendant intentionally placed, cancelled, increased, or decreased a bet.

Second, the defendant acted after acquiring knowledge, not available to other players, (of the (outcome of the game) (subject of the bet)) (or) (of events affecting the (outcome of the game) (subject of the bet)).

[3] First, the defendant intentionally (claimed) (or) (collected) money or anything of value from (a game) (or) (an authorized gambling establishment[1]).

Second, the defendant had not won or earned the money or anything of value from (the game) (or) (the authorized gambling establishment).

[4] First, the defendant intentionally manipulated (a gambling device[2]) (or) (associated equipment[3]) to affect (the outcome of the game) (or) (the number of plays or credits available on the game).

[5] First, the defendant intentionally altered the elements of chance or methods of selection or criteria that determine the

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31.25

[1] *See* M.S.A. § 609.75, subd. 12, for definition of "authorized gambling establishment."

[2] *See* M.S.A. § 609.75, subd. 4, for definition of "gambling device."

[3] *See* M.S.A. § 609.75, subd. 4a, for definition of "associated device."

result of the game or amount or frequency of payment of the game.

[A] [Second] [Third], the defendant held a license related to gambling.

[B] [Second] [Third], the defendant was an employee of a (person) (gambling establishment) holding a license related to gambling.

[Second] [Third] [Fourth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See CRIMJIG 3.32 for jury instructions on "intentionally."

CRIMJIG 31.26

USE OR POSSESSION OF PROHIBITED DEVICE—DEFINED

The statutes of Minnesota provide that whoever intentionally

[1] uses or possesses a probability-calculating or outcome-affecting device at an authorized gambling establishment

[2] uses, or possesses with intent to use, a key or other instrument for the purpose of opening, entering, and affecting the operation of any game or gambling device or for removing money, chips, tokens, or other contents from any game or gambling device

is guilty of a crime.

COMMENT

M.S.A. § 609.76, subd. 4.

CRIMJIG 31.27

USE OR POSSESSION OF PROHIBITED DEVICE—ELEMENTS

The elements of use or possession of a prohibited device are:

[1] First, the defendant intentionally (used) (or) (possessed) a probability-calculating or outcome-affecting device. A "probability-calculating" or "outcome-affecting" device is any device to assist in:

[A] projecting the outcome of a game [other than authorized pari-mutuel betting];

[B] keeping track of or counting cards used in a game;

[C] analyzing the probability of the occurrence of an event relating to a game [other than authorized pari-mutuel betting];

[D] analyzing the strategy for playing or betting in a game [other than authorized pari-mutuel betting].

However, a book, graph, periodical, chart, or pamphlet is not a "probability calculating" or "outcome-affecting" device.

Second, the defendant (used) (or) (possessed) the device at an authorized gambling establishment.[1]

[2] First, the defendant (used) (or) (possessed with intent to use) a key or other instrument.

Second, the defendant acted for the purpose of (opening, entering, and affecting the operation of any game or gambling device[2]) (or) (for removing money, chips, tokens, or other contents from any game or gambling device).

31.27

[1] *See* M.S.A. § 609.75, subd. 12, for definition of "authorized gambling establishment."

[2] *See* M.S.A. § 609.75, subd. 11, for definition of "authorized gambling activity."

[Second] [Third], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See CRIMJIG 3.32 for jury instruction defining "intentionally" and "with intent."

"Game" is defined in M.S.A. § 609.75, subd. 10.

CRIMJIG 31.28

USE OF COUNTERFEIT CHIPS OR TOKENS—DEFINED

Under Minnesota law, whoever intentionally uses counterfeit chips or tokens to play a game at an authorized gambling establishment is guilty of a crime.

COMMENT

M.S.A. § 609.76, subd. 5.

CRIMJIG 31.29

USE OF COUNTERFEIT CHIPS OR TOKENS—ELEMENTS

The elements of using counterfeit chips or tokens are:

First, the defendant was at an authorized gambling establishment.[1]

Second, defendant intentionally used counterfeit chips or tokens to play a game[2] at the establishment. "Counterfeit chips or tokens" are chips or tokens not approved by the government regulatory agency for use in an authorized gambling activity.

Third, defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

31.29

[1] *See* M.S.A. § 609.75, subds. 5 and 12, for definition of "authorized gambling establishment."

[2] *See* M.S.A. § 609.75, subd. 10, for definition of "game."

CRIMJIG 31.30

PROHIBITED MANUFACTURE, SALE AND MODIFICATION OF GAMBLING DEVICES AND ASSOCIATED EQUIPMENT—DEFINED

Under Minnesota law, whoever

[1] manufactures, sells, distributes, or otherwise provides cards, chips, tokens, dice, or other equipment or devices intended to be used to violate (________[1]) (the gambling laws of Minnesota[2])

[2] intentionally marks, alters, or otherwise modifies lawful associated equipment or gambling devices for purposes of violating (________[3]) (the gambling laws of Minnesota[4])

is guilty of a crime.

COMMENT

M.S.A. 609.76, subd. 6.

31.30

[1] A specific violation of any section of M.S.A. § 609.76

[2] Any violation of M.S.A. § 609.76.

[3] A specific violation of any section of M.S.A. § 609.76.

[4] Any violation of M.S.A. § 609.76.

CRIMJIG 31.31

PROHIBITED MANUFACTURE, SALE AND MODIFICATION OF GAMBLING DEVICES AND ASSOCIATED EQUIPMENT—ELEMENTS

The elements of the prohibited (manufacture) (sale) (modification) of (gambling devices) (associated equipment) are:

[1] First, the defendant (manufactured) (sold) (distributed) (or otherwise provided) (cards) (chips) (tokens) (dice) (or) (other equipment or devices).

Second, the defendant intended the (cards) (chips) (tokens) (dice) (or) (other equipment or devices) to be used to violate (________[1]) (the gambling laws of Minnesota[2]).

[2] First, the defendant intentionally (marked) (altered) (or) (otherwise modified) lawful (associated equipment[3]) (gambling devices[4])

Second, the defendant did so for purposes of violating (________[5]) (the gambling laws of Minnesota[6]).

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

31.31

[1] A specific violation of any section of M.S.A. § 609.76.

[2] Any violation of M.S.A. § 609.76

[3] *See* M.S.A. § 609.75, subd. 4a, for definition of "associated equipment."

[4] *See* M.S.A. § 609.75, subd. 4, for definition of "gambling device."

[5] A specific violation of any section of M.S.A. § 609.76.

[6] Any violation of M.S.A. § 609.76.

CRIMJIG 31.32

INSTRUCTION TO VIOLATE GAMBLING LAWS—DEFINED

Under Minnesota law, whoever, with intent that the information or knowledge conveyed be used to violate (__________[1]) (the gambling laws of Minnesota[2]), instructs another person in violating the gambling laws of Minnesota is guilty of a crime.

COMMENT

M.S.A. § 609.76, subd. 7.

31.32

[1] A specific violation of any section of M.S.A. § 609.76.

[2] Any violation of M.S.A. § 609.76.

CRIMJIG 31.33

INSTRUCTING ANOTHER TO VIOLATE GAMBLING LAWS—ELEMENTS

The elements of instructing another to violate gambling laws are:

First, the defendant instructed (________) (another person) to violate (________[1]) (the gambling laws of Minnesota[2]).

Second, the defendant acted with the intent that the information or knowledge conveyed to ________ (the other person) be used to violate (________[3]) (the gambling laws of Minnesota).[4]

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See CRIMJIG 3.32 for instruction regarding intent.

31.33

[1] A specific violation of any section of M.S.A. § 609.76.

[2] Any violation of M.S.A. § 609.76.

[3] A specific violation of any section of M.S.A. § 609.76.

[4] Any violation of M.S.A. § 609.76.

CRIMJIG 31.34

LAWFUL GAMBLING FRAUD—DEFINED

The statutes of Minnesota provide that whoever

[1] knowingly claims a lawful gambling prize using altered or counterfeited gambling equipment

[2] knowingly claims a lawful gambling prize by means of fraud, deceit, or misrepresentation

[3] manipulates any form of lawful gambling or tampers with any gambling equipment with intent to influence the outcome of a game or the receipt of a prize

[4] knowingly tampers with or attempts to alter any component or device used in the conduct or play of electronic pull-tabs or electronic linked bingo (as authorized under Chapter 349) or attempts to convert legal gambling into illegal gambling at a licensed establishment (under chapter 340A)

[5] (knowingly[1]) has unauthorized possession of an electronic pull-tab device, an electronic linked bingo device, or other components used in the conduct of electronic pull-tabs or electronic linked bingo

[6] knowingly places or uses false information on a prize receipt or any other form approved for use by the gambling control board or the alcohol and gambling enforcement division of the Department of Public Safety

is guilty of a crime.

31.34

[1] Although the statute does not require that the possession be "knowingly," if the defendant is charged with a gross misdemeanor or felony level offense, the law imposes a mens rea requirement. *See State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012) for the general rules regarding intent.

COMMENT

M.S.A. § 609.763.

CRIMJIG 31.35

LAWFUL GAMBLING FRAUD—ELEMENTS

The elements of lawful gambling fraud are:

[1] First, the defendant knowingly claimed a lawful gambling prize.

Second, the defendant did so using (altered) (or) (counterfeited) gambling equipment.

[2] First, the defendant knowingly claimed a lawful gambling prize.

Second, the defendant did so by means of fraud, deceit, or misrepresentation.

[3] First, the defendant (manipulated a form of lawful gambling) (tampered with gambling equipment).

Second, defendant did so with intent to influence the outcome of a game or the receipt of a prize.

[4] First, the defendant knowingly (tampered with) (or) (attempted to alter) any component or device used in the conduct or play of (electronic pull-tabs) (electronic linked bingo).

[5] First, the defendant knowingly attempted to convert legal gambling into illegal gambling at a licensed establishment.

[6] First, the defendant (knowingly[1]) had unauthorized possession of an electronic (pull-tab device) (linked bingo device) or other component used in the conduct of (electronic pull-tabs) (electronic linked bingo).

[7] First, the defendant knowingly (placed) (or) (used) false

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31.35

[1] Although the statute does not require that the possession be "knowingly," if the defendant is charged with a gross misdemeanor or felony level offense, the law imposes a mens rea requirement. *See State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012) for the general rules regarding intent.

information on a (prize receipt) (form approved for use by the gambling control board or the alcohol and gambling enforcement division of the Department of Public Safety. [________ is such a form.]).

(Second) (Third), the defendant's act(s) occurred on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant guilty, you have an additional issue to determine, and it will be put to you in the form of questions on the verdict form. The questions are:

Was the dollar amount involved in the defendant's act less than $500? Was the dollar amount involved in the defendant's act more than $500 but not more than $2,500? Was the dollar amount involved in the defendant's act more than $2,500? You will answer one of the questions "yes." If you have a reasonable doubt as to the dollar amount involved, you should answer "yes" to the lesser of the dollar amount you believe it had.

CHAPTER 32

WEAPONS CRIMES

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CRIMJIG 32.01

USE/POSSESSION OF DANGEROUS WEAPON—DEFINED

Under Minnesota law, whoever

[1] recklessly handles or uses a (gun) (dangerous weapon) (explosive) so as to endanger the safety of another

[2] intentionally points at or toward another a gun of any kind, capable of injuring or killing a human being, whether loaded or unloaded,

[3] possesses any dangerous article or substance for the purpose of being used unlawfully as a weapon against another,

is guilty of a crime.

COMMENT

M.S.A. § 609.66, subds. 1(1), (2) and (5).

The Minnesota Supreme Court, in *In re C.R.M.*, 611 N.W.2d 802 (Minn. 2000), added a scienter requirement to M.S.A. § 609.66, subd. 1(d), requiring the State to prove that the defendant, in that case, "knowingly" possessed a knife while on school property. At this time, the Committee is reluctant to extend the holding in *C.R.M.* beyond the specific statute and facts of the case.

CRIMJIG 32.02

USE/POSSESSION OF DANGEROUS WEAPON—ELEMENTS

The elements of use or possession of a dangerous weapon are:

[1] First, the defendant recklessly handled or used a (gun) (dangerous weapon) (explosive). [A person acts "recklessly" if the person acts in willful or wanton disregard for the safety of others. This means a conscious and intentional (act) (discharge of a (gun) (weapon)) that the defendant knew, or should have known, created an unreasonable risk of harm to others under the totality of the circumstances.] [The "totality of the circumstances" includes what the person knew and did not know concerning the circumstances of endangerment.] The defendant need not have intended, however, to cause harm.

Second, the defendant handled or used the (gun) (dangerous weapon) (explosive) so as to endanger the safety of another person.

[2] First, the defendant intentionally pointed a gun of any kind, capable of injuring or killing a human being, whether loaded or unloaded.

Second, the defendant pointed the gun at or toward another person.

[3] First, the defendant possessed a dangerous article or substance.

Second, the defendant possessed the dangerous article or substance for the purpose[1] of being used unlawfully used as a weapon, against another person.

[Third, the defendant's act was committed in a (school)

32.02

[1] *See* M.S.A. § 609.02, subd. 9, which equates "for the purpose" with "intentionally" thus meeting the mens rea requirement for this offense if it is charged as a gross misdemeanor.

(park) (public housing) zone? (A "school zone" is any property owned, leased, or controlled by a school district or an organization operating a nonpublic school[2] where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.) (A "park zone" is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. Park zone includes the area within (300 feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.) (A "public housing zone" is a public housing project or development administered by a local housing agency, plus the area within (300 feet of the property's boundary,) (or) (one city block,) (whichever distance is greater).

[[Fourth, at the time of the act, the defendant was an owner, tenant, or invitee for a lawful purpose with respect to the premises within the (school) (park) (public housing) zone.]]

[Third] [Fourth] [Fifth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

It is recommended that where the defendant is charged with possession or use of a "dangerous weapon," the court should instruct the jury on the definition. *See* M.S.A. § 609.02, subd. 6, for the definition of a "dangerous weapon."

The Supreme Court rejected a claim that a conviction for second degree assault and a conviction for reckless handling of a firearm were inconsistent verdicts. It held that intent to commit an assault and intent to point a gun are not inconsistent mental states, and the terms "reckless" and "intent" are not mutually exclusive. The term "reckless" refers to the risk created, not the mental intent that resulted in an act that produced fear or injury. *State v. Cole*, 542 N.W.2d 43 (Minn. 1996).

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[2] *See* M.S.A. § 123.932, subd. 3, for definition of a nonpublic school.

Where the defendant is charged with possession or use of devices designed as weapons and capable of producing, or used or intended to be used in a manner calculated as likely to produce, death or great bodily harm, the trial court should refer to M.S.A. § 609.02, subd. 8, for the statutory definition of "great bodily harm." Where the allegedly dangerous weapon is a flammable liquid, the judge should consult M.S.A. § 609.02, subd. 6, for specific instruction. Where the defendant is charged with unlawful use or possession of an explosive, the jury should be instructed as to the definition of explosive contained in M.S.A. § 609.668, subd. 1.

In those cases where possession is an issue, the court should instruct the jury that possession may be actual or constructive, as well as sole or joint. *State v. Olson*, 326 N.W.2d 661 (Minn. 1982); *State v. Willis*, 320 N.W.2d 726 (Minn. 1982); *State v. Mollberg*, 310 Minn. 376, 246 N.W.2d 463 (1976); *State v. Florine*, 303 Minn. 103, 226 N.W.2d 609 (1975). See CRIMJIG 3.33 "Possession."

In *State v. Kycia*, 665 N.W.2d 539 (Minn. App. 2003), the Court of Appeals held that it was error not to include an instruction to the jury about the importance of the circumstances present at the time of the shooting.

In cities where no grid system is present, the term "one city block" does not apply and the transaction must take place within 300 feet of the park for the statute to apply. *See State v. Estrella*, 700 N.W.2d 496 (Minn. App. 2005).

When land surrounding a public park is divided into rectangular blocks bounded by city streets, the area "within one city block . . . of the park boundary" include the entire area of block adjacent to the park. *State v. Carufel*, 783 N.W.2d 539 (Minn. 2010) (a controlled substance case). This holding would presumably also apply to a school zone or public housing zone.

CRIMJIG 32.03

DRIVE-BY SHOOTING—DEFINED

Under Minnesota law, whoever, while (in) (having just exited from) a motor vehicle, recklessly discharges a firearm at or toward (another motor vehicle) (a building), is guilty of a crime.

COMMENT

M.S.A. § 609.66, subd. 1e.

CRIMJIG 32.04

DRIVE-BY SHOOTING—ELEMENTS

The elements of drive-by shooting are:

First, the defendant (was in) (had just exited from) a motor vehicle. A "motor vehicle" is a self-propelled device for moving persons or property, or pulling implements from one place to another, whether the device is operated on land, rails, or water, or in the air.

Second, the defendant recklessly discharged a firearm at or toward (another motor vehicle) (a building). [A "building" is a structure suitable for affording shelter for human beings and includes any appurtenant or connected structure.] A person acts "recklessly" if the person acts in willful or wanton disregard for the safety of others. This means a conscious and intentional act that the defendant knows, or should know, creates an unreasonable risk of harm to others. The defendant need not have intended, however, to cause harm.

[Third, the defendant was firing at or toward a person.]

[Third, the (vehicle) (building) was occupied at the time of defendant's act.]

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Pursuant to M.S.A. § 609.66, subd. 1e(b), the definition of "motor vehicle" is from M.S.A. § 609.52, subd. 1, and the definition of "building" is from M.S.A. § 609.581, subd. 2. The definition of "reckless" is consistent with the definition used in CRIMJIG 29.32, as based on the cases cited in the Comment to that instruction, including *State v. Bolsinger*, 221 Minn. 154, 21 N.W.2d 480 (1946).

Note that in *State v. Hayes*, 526 N.W.2d 799, (Minn. 2013) the Supreme Court held that there must be evidence that the defendant recklessly discharged a weapon at a motor vehicle or a building for the defendant to be found guilty of a drive-by shooting. In this case, although defendant deliberately murdered the victim, there was no showing that this involved a reckless discharge toward a motor vehicle or a building. The Court also noted that this case involved a discharge into the vehicle defendant occupied and not "another" (i.e., a different) vehicle. The Court invited the legislature to correct this "strange result."

The term "having just exited the vehicle" contained in the statute creates an element of immediacy which the state must prove. *State v. Brown*, 796 N.W.2d 169 (Minn. App. 2011). The limits of immediacy are set forth in *State v. Lewis*, 638 N.W.2d 788, which require proof of "the immediate action of shooting following the exiting from an automobile. The Court of Appeals went on to say, in *Brown*, that while *Lewis* recognizes some flexibility in the concept of immediacy, the one to two minutes from exiting the vehicle to the time of shooting in *Lewis* represents its "logical limits."

In *State v. Newman*, 538 N.W.2d 476 (Minn. App. 1995), the Court of Appeals upheld a conviction under the drive-by shooting statute, M.S.A. § 609.66, subd. 1e. The Court rejected the claim that the BB-gun used in the drive-by shooting was not a firearm within the meaning of the statute.

A paintball gun is not a "firearm," as that term is used in the drive-by shooting statute. *State v. Coauette*, 601 N.W.2d 443 (Minn. App. 1999).

CRIMJIG 32.05

SHOOTING AT TRANSIT VEHICLE OR FACILITY—DEFINED

Under Minnesota law, whoever recklessly discharges a firearm at or in any portion of a (public transit vehicle) (public transit facility) is guilty of a crime.

COMMENT

M.S.A. § 609.855, subd. 5.

CRIMJIG 32.06

SHOOTING AT TRANSIT VEHICLE OR FACILITY—ELEMENTS

The elements of shooting at or in a (public transit vehicle) (public transit facility) are:

First, the defendant discharged a firearm at or in any portion of a (public transit vehicle) (public transit facility).

Second, the defendant acted recklessly in discharging the firearm. A person acts "recklessly" if the person acts in willful or wanton disregard for the safety of others. This means a conscious and intentional act that the defendant knows, or should know, creates an unreasonable risk of harm to others. The defendant need not have intended, however, to cause harm.

[Third, the (public transit vehicle) (public transit facility) was occupied at the time of defendant's act.]

[Third] [Fourth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.855, subd. 5.

CRIMJIG 32.07

INTENTIONAL DISCHARGE OF A FIREARM—DEFINED

Under Minnesota law, whoever intentionally discharges a firearm under circumstances that endanger the safety of another is guilty of a crime.

COMMENT

M.S.A. § 609.66, subd. 1a(a)(2).

CRIMJIG 32.08

INTENTIONAL DISCHARGE OF A FIREARM— ELEMENTS

The elements of intentional discharge of a firearm are:

First, the defendant discharged a firearm.

Second, the defendant acted intentionally in discharging the firearm.

Third, the discharge of the firearm was under circumstances that endangered the safety of (________) (another person).

[Fourth, the defendant discharged the firearm in a (school) (park) (public housing) zone? (A "school zone" is any property owned, leased, or controlled by a school district or an organization operating a nonpublic school[1] where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.) (A "park zone" is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. Park zone includes the area within (300 feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.) (A "public housing zone" is a public housing project or development administered by a local housing agency, plus the area within (300 feet of the property's boundary,) (or) (one city block,) (whichever distance is greater).)]

[Fourth] [Fifth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find

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32.08

[1] *See* M.S.A. § 123.932, subd. 3, for the definition of a nonpublic school.

that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant is guilty, you have another issue to determine, and it will be put to you in the form of a question on the verdict form. The question is: Did You will answer the question "yes" or "no." If you have a reasonable doubt as to the answer, you should answer the question "no."]

COMMENT

In cities where no grid system is present, the term "one city block" does not apply and the transaction must take place within 300 feet of the park for the statute to apply. *See State v. Estrella*, 700 N.W.2d 496 (Minn. App. 2005).

When land surrounding a public park is divided into rectangular blocks bounded by city streets, the area "within one city block . . . of the park boundary" include the entire area of block adjacent to the park. *State v. Carufel*, 783 N.W.2d 539 (Minn. 2010) (a controlled substance case). This holding would presumably also apply to a school zone or public housing zone.

CRIMJIG 32.09

RECKLESS DISCHARGE OF A FIREARM WITHIN A MUNICIPALITY—DEFINED

Under Minnesota law, whoever recklessly discharges a firearm within a municipality is guilty of a crime.

COMMENT

M.S.A. § 609.66, subd. 1a(a)(3).

CRIMJIG 32.10

RECKLESS DISCHARGE OF A FIREARM WITHIN A MUNICIPALITY—ELEMENTS

The elements of reckless discharge of a firearm within a municipality are:

First, the defendant discharged a firearm.

Second, the defendant acted recklessly in the discharge of the firearm. Recklessly” means that the defendant acted in conscious disregard of a substantial and unjustifiable risk [that the public would be harmed] [that harm to the public would result from (his) (her) conduct]. This means the defendant (consciously) (intentionally) committed an act: 1) that created a risk that the firearm would discharge; 2) the risk was substantial; 3) there was no adequate reason for taking the risk; 4) the defendant was aware of the risk; and 5) the defendant disregarded it. The defendant need not have intended, however, to cause harm.

Third, the discharge of the firearm was within (the city of ________) (a municipality). [A “municipality” is a city, however organized.]

[Fourth, defendant discharged the firearm in a (school) (park) (public housing) zone? (A “school zone” is any property owned, leased, or controlled by a school district or an organization operating a nonpublic school[1] where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.) (A “park zone” is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. Park zone includes the area within (300 feet) (or) (one city block,) (whichever distance is greater,) of the park

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32.10

[1] *See* M.S.A. § 123.932, subd. 3, for the definition of a nonpublic school.

boundary.) (A "public housing zone" is a public housing project or development administered by a local housing agency, plus the area within (300 feet of the property's boundary,) (or) (one city block,) (which ever distance is greater).)]

[Fourth] [Fifth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

The definition of municipality is from M.S.A. § 414.011, subd. 2.

In cities where no grid system is present, the term "one city block" does not apply and the transaction must take place within 300 feet of the park for the statute to apply. *See State v. Estrella*, 700 N.W.2d 496 (Minn. App. 2005).

When land surrounding a public park is divided into rectangular blocks bounded by city streets, the area "within one city block . . . of the park boundary" include the entire area of block adjacent to the park. *State v. Carufel*, 783 N.W.2d 539 (Minn. 2010) (a controlled substance case). This holding would presumably also apply to a school zone or public housing zone

CRIMJIG 32.11

FAILURE TO RENDER AID FROM FIREARM INJURY—DEFINED

Under Minnesota law whoever discharges a firearm and knows or has reason to know that the discharge has caused bodily harm to another person, and who fails to immediately investigate the extent of the person's injuries and render immediate reasonable assistance to the injured person, is guilty of a crime.

COMMENT

M.S.A. § 609.662, subd. 2.

CRIMJIG 32.12

FAILURE TO RENDER AID FROM FIREARM INJURY—ELEMENTS

The elements of failure to render aid from firearm injury are:

First, the defendant intentionally discharged a firearm.

Second, the defendant knew or had reason to know that the discharge of the firearm caused bodily harm to (________) (another person). "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

Third, the defendant failed to immediately investigate the extent of (________'s) (the injured person's) injuries and render immediate reasonable assistance to (________) (the injured person). "Reasonable assistance" means aid appropriate to the circumstances and includes obtaining or attempting to obtain assistance from a conservation or law enforcement officer, or from medical personnel.

[1] [Fourth, (________) (the injured person) suffered death or great bodily harm as a result of the discharge? "Great bodily harm" means bodily harm that creates a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any part of the body, or other serious bodily harm.

[2] Fourth, (________) (the injured person) suffered substantial bodily harm as a result of the discharge? "Substantial bodily harm" means bodily harm that involves a temporary but substantial disfigurement, causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or causes a fracture of any bodily member.

[Fourth] [Fifth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find

that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 32.13

FAILURE TO RENDER AID FROM FIREARM INJURY—WITNESS TO—DEFINED

Under Minnesota law, whoever witnesses the discharge of a firearm, knows or has reason to know the discharge caused bodily harm to another person, and fails to immediately investigate the extent of the person's injuries and render immediate reasonable assistance to the injured person is guilty of a crime.

COMMENT

M.S.A. § 609.662, subd. 3.

CRIMJIG 32.14

FAILURE TO RENDER AID FROM FIREARM INJURY—WITNESS TO—ELEMENTS

The elements of failure to render aid from firearm injury are:

First, the defendant witnessed the discharge of a firearm.

Second, the defendant knew or had reason to know that the discharge of the firearm caused bodily harm to (________) (another person). "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

Third, the defendant failed to immediately investigate the extent of (________'s) (the injured person's) injuries and render immediate reasonable assistance to (________) (the injured person). "Reasonable assistance" means aid appropriate to the circumstances and includes obtaining or attempting to obtain assistance from a conservation or law enforcement officer, or from medical personnel.

[Fourth, the defendant was a companion of the person who discharged the firearm at the time of the discharge.]

[Fourth] [Fifth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 32.15

DISCHARGE OF A FIREARM CAUSING BODILY HARM—DEFENSE

No crime is committed if the defendant failed to investigate or render assistance because the defendant reasonably perceived that such actions could not be taken without a significant risk of bodily harm to the defendant or others.

The burden of proof is on the State to prove beyond a reasonable doubt that the defendant did not reasonably perceive these actions could be taken without significant risk of bodily harm to the defendant or others.

[It is a defense to a charge of (discharge of a firearm causing bodily harm) (witness to discharge of a firearm causing bodily harm) if the defendant proves by the greater weight of the evidence that the defendant failed to investigate or render assistance because the defendant reasonably perceived that such actions could not be taken without a significant risk of bodily harm to the defendant or others. This means that the defendant must prove to you that it is more likely true than not true that the failure to investigate or render assistance was because the defendant reasonably perceived that such actions could not be taken without a significant risk of bodily harm to the defendant or to others.]

COMMENT

M.S.A. § 609.662, subd. 4.

While the statute would appear to make this defense an affirmative defense, with the burden of proof placed upon the defendant by preponderance of the evidence, a question arises as to whether or not the burden of proof on such an issue may be placed upon the defendant in light of *Martin v. Ohio*, 480 U.S. 228, 107 S. Ct. 1098, 94 L.Ed.2d 267 (1987); *Patterson v. New York*, 432 U.S. 197, 97 S. Ct. 2319, 53 L.Ed.2d 281 (1977); and *Mullaney v. Wilbur*, 421 U.S. 684, 95 S. Ct. 1881, 44 L.Ed.2d 508 (1975). The Committee has elected to pattern this instruction after the requirements of burden of proof similar to the defense of self-defense. *See* CRIMJIG 7.05. If the trial court finds that the statute does not create an unconstitutional shift in the burden of proof, the

Committee recommends that the bracketed language be used.

CRIMJIG 32.16

FELON IN POSSESSION OF A FIREARM—DEFINED

Under Minnesota law, whoever has [been convicted of]] [adjudicated delinquent for] [convicted as an extended juvenile jurisdiction juvenile of] a crime of violence[1] and who ships, transports, possesses, or receives a firearm is guilty of a crime.

COMMENT

M.S.A. § 260B.245, subd. 1(b); M.S.A. § 609.165, subd. 1a.

32.16

[1] *See* M.S.A. § 624.712, subd. 5 for definition of "crime of violence."

CRIMJIG 32.17

FELON IN POSSESSION OF A FIREARM—ELEMENTS

The elements of a felon in possession of a firearm[1] are:

First, the defendant knowingly shipped, transported, possessed or received a firearm.

Second, the defendant had been [been convicted of]] [adjudicated delinquent for] [convicted as an extended juvenile jurisdiction juvenile of] a crime of violence. The statutes of Minnesota define a crime of violence to include ________.[2]

Third, the defendant's act took place on (or about) ________ in ________, County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 260B.245, subd. 1(b); M.S.A. § 609.165, subd. 1a.

A burglar who comes into the possession of firearms once inside a building is subject to the three-year minimum sentence under Minn. Stat. § 609.11, subd. 5(a) as a defendant in possession of firearms. *State v. Herbert*, 601 N.W.2d 210 (Minn. App. 1999).

A paintball gun is not a "firearm," as that term is used in the felon-in-possession statute. *State v. Coauette*, 601 N.W.2d 443 (Minn. App. 1999).

Under *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), the defendant is entitled to stipulate to the existence of the prior conviction. In such circumstances this element should be deleted from the instruction.

32.17

[1] *See* M.S.A. § 609.666 for definition of a firearm.

[2] Crime of violence is defined under M.S.A. § 624.712, subd. 5.

CRIMJIG 32.18

POSSESSION OF A PISTOL OR SEMI-AUTOMATIC MILITARY-STYLE ASSAULT WEAPON BY CHARGED INDIVIDUAL—DEFINED

Under Minnesota law, whoever is presently charged with a crime punishable by imprisonment for a term exceeding one year, and who receives, ships, or transports any (pistol) (semi-automatic military-style assault weapon) is guilty of a crime.

COMMENT

M.S.A. § 624.713, subd. 1a.

CRIMJIG 32.19

POSSESSION OF A PISTOL OR SEMI-AUTOMATIC MILITARY-STYLE ASSAULT WEAPON BY CHARGED INDIVIDUAL—ELEMENTS

The elements of illegal possession of a (pistol) (semi-automatic military-style assault weapon) are:

First, the defendant received, shipped, or transported a (pistol) (semi-automatic military-style assault weapon). [A "pistol" is a weapon designed to be fired by the use of a single hand with an overall length of less than 26 inches, or having a barrel or barrels of a length less than 18 inches in the case of a shotgun, or having a barrel of a length of less than 16 inches in the case of a rifle, from which may be fired or ejected one or more solid projectiles by means of a cartridge or shell or by the action of an explosive or the igniting of a flammable explosive substance for which the propelling force is a spring, elastic band, carbon dioxide, air, or other gas or vapor.] ["Semi-automatic military assault weapon" means ________.][1]

Second, at the time the defendant received, shipped, or transported a (pistol) (semi-automatic military-style assault weapon), the defendant was charged with a crime punishable by imprisonment for a term exceeding one year.[2] ________ is such a crime.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable

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32.19

[1] *See* M.S.A. § 624.712, subd. 7 for a definition of semi-automatic military-style assault weapon. Under M.S.A. § 624.712, subd. 8, the superintendent of the Bureau of Criminal Apprehension shall annually publish an authoritative list of firearms included within this definition.

[2] *See* M.S.A. § 624.712, subd. 10, for a definition of "crime punishable by imprisonment for a term exceeding one year." If the defendant stipulates to this element, it should be deleted from the instructions given to the jury. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

doubt, the defendant is not guilty.

COMMENT

M.S.A. § 624.713, subd. 1a.

CRIMJIG 32.20

POSSESSION OF PISTOL/SEMI-AUTOMATIC MILITARY-STYLE ASSAULT WEAPON OR FIREARM BY PROHIBITED PERSONS—DEFINED

Under Minnesota law, whoever knowingly possesses a (pistol) (semi-automatic military-style assault weapon) (firearm) and

[1] is under the age of 18 years who

  [a] is not in the actual presence or under the direct supervision of the parent or guardian,

  [b] is not acting for the purpose of military drill under the auspices of a legally recognized military organization and under competent supervision,

  [c] is not acting for the purpose of instruction, competition, or target practice, on a firing range approved by the chief of police or county sheriff and under direct supervision,

  [d] has not successfully completed a course designed to teach marksmanship and pistol safety approved by the Commissioner of Natural Resources,

[2] has been convicted or adjudicated delinquent or convicted as an extended jurisdiction juvenile in this state or elsewhere for committing a crime of violence,

[3] is or has ever been confined in Minnesota or elsewhere to a treatment facility as mentally ill, mentally retarded, or mentally ill and dangerous to the public, or has ever been found incompetent to stand trial or not guilty by reason of mental illness, unless the person possesses a certificate of a medical doctor or psychiatrist licensed in Minnesota or other satisfactory proof that the person is no longer suffering from this disability,

[4] has been convicted in Minnesota or elsewhere of a misdemeanor or gross misdemeanor controlled substances crime, unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of any other Minnesota controlled substances law in this state or a similar law in another state.

[5] or has ever been committed by a judicial determination for treatment for the habitual use of a controlled substance or marijuana.[1]

[6] has been confined or committed to a treatment facility in Minnesota or elsewhere as chemically dependent, unless that person has completed treatment and possesses a certificate of a medical doctor or psychiatrist licensed in Minnesota or other satisfactory proof that the person has not abused alcohol within the past two years,

[7] is a peace officer who has been informally admitted to a treatment facility for chemical dependency, unless the officer possesses a certificate from the head of the treatment facility discharging or provisionally discharging the officer from the treatment facility,

[8] has been charged in adult or juvenile court with committing a crime of violence, has been placed in a pretrial diversion program by the court before disposition, and has not completed the diversion program, and the charge of committing the violence has not been dismissed,

[9] has been convicted of assault in the fifth degree in Minnesota or convicted in another state of committing an offense similar to assault in the fifth degree against a family or household member, unless three years have elapsed since the date of conviction and during

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32.20 and 152.02.

[1] As defined in M.S.A. §§ 152.01

that time has not been convicted of any other violation of assault in the fifth degree,

[10] has been convicted in Minnesota or elsewhere of assaulting a family or household member, was found by the court to have used a firearm in any way in the commission of the assault, and is prohibited for the period of time determined by the court from possessing a firearm,

[11] has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year,

[12] is a fugitive from justice as a result of having fled from any state to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding,

[13] is an unlawful user of controlled substances,

[14] has been judicially committed to a treatment facility in Minnesota or elsewhere as "mentally ill," "mentally retarded," or "mentally ill and dangerous,"

[15] is an alien who is illegally or unlawfully in the United States,

[16] has been discharged from the armed forces of the United States under dishonorable conditions,

[17] has renounced the person's citizenship, having been a citizen of the United States,

[18] has been convicted, in this state or any other state, of (________), a gross misdemeanor, unless three years have passed since the date of conviction and, during that time, the defendant has not been convicted of any other listed crimes.

[19] who has been convicted of a violation of (section M.S.A. § 609.244) (assault in the fifth degree) if the court determined that the assault was against a fam-

ily or household member,[2] unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of another violation of ((M.S.A. § 609.224) (fifth degree assault) or (a violation listed in section (M.S.A. § 609.229) (crimes committed for the benefit of a gang); M.S.A. § 609.2231, subd. 4 (assaults motivated by bias); M.S.A. § 609.225 (false imprisonment); M.S.A. § 609.378 (neglect or endangerment of a child); M.S.A. § 609.582, subd. 4 (fourth degree burglary); M.S.A. § 609.665 (setting a spring trap); M.S.A. § 609.72 (riot); or (M.S.A. § 609.749) (stalking)).

[20] is subject to an order for protection.[3]

COMMENT

M.S.A. § 624.713, subd. 1; M.S.A. § 609.224, subd. 3.

Because a BB gun falls within the operative definition of "firearm," possession of a BB gun by a person convicted of a crime of violence is prohibited, notwithstanding the exemption of BB gun from the definition of "pistol." *State v. Fleming*, 724 N.W. 2d 537 (Minn. App. 2006.

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[2] In accordance with section M.S.A. § 609.2242, subd. 8, Note that this section does not exist, although it will probably be included in a revisor's bill in 2015. The section does refer to "domestic assault."

[3] Either under M.S.A. § 260C.201, subd. 3(d) or M.S.A. § 518B.01, subd. 6(g).

CRIMJIG 32.21

POSSESSION OF PISTOL/SEMI-AUTOMATIC MILITARY-STYLE ASSAULT WEAPON OR FIREARM BY PROHIBITED PERSONS—ELEMENTS

The elements of possession of a (pistol) (semi-automatic military-style assault weapon) (firearm) are:

First, the defendant knowingly possessed a (pistol) (semi-automatic military-style assault weapon) (firearm[1]) or consciously exercised dominion and control over it. [A "pistol" is a weapon designed to be fired by the use of a single hand with an overall length of less than 26 inches, or having a barrel or barrels of a length less than 18 inches in the case of a shotgun, or having a barrel of a length less than 16 inches in the case of a rifle, from which may be fired or ejected one or more solid projectiles by means of a cartridge or shell or by the action of an explosive or the igniting of a flammable explosive substance for which the propelling force is a spring, elastic band, carbon dioxide, air or other gas, or vapor.] ["Semi-automatic military-assault weapon"[2] means (________).]

Second, the defendant

[1] was under the age of 18 years[2] and

[a] was not in the actual presence or under the direct supervision of the parent or guardian,

[b] was not acting for the purpose of military drill under the auspices of a legally recognized military organization and under competent supervision,

[c] was not acting for the purpose of instruction, competition, or target practice, on a firing range ap-

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32.21

[1] For the definition of firearms see M.S.A. § 609.666, subd. 1(a).

[2] The prohibition concerning a person under the age of 18 applies only to pistols and semi-automatic military-style assault weapons, and not to firearms.

proved by the chief of police or county sheriff and under direct supervision,

[d] had not successfully completed a course designed to teach marksmanship and pistol safety approved by the Commissioner of Natural Resources,

[2] has been convicted or adjudicated delinquent or convicted as an extended jurisdiction juvenile in this state or elsewhere for committing a crime of violence,

[3] was or had been confined or committed in Minnesota or elsewhere in a treatment facility as mentally ill, mentally retarded, or mentally ill and dangerous to the public, has been found incompetent to stand trial or not guilty by reason of mental illness, and did not possess a certificate of a medical doctor or psychiatrist licensed in Minnesota or other satisfactory proof that the person was no longer suffering from this disability. [It is a defense to this offense that the defendant's ability to possess firearms has been restored by a judicial proceeding.]

[4] had been convicted in Minnesota or elsewhere of a misdemeanor or gross misdemeanor controlled substances crime, unless three years have elapsed since the date of conviction and, during that time, the defendant has not been convicted of any other such violation of Minnesota controlled substance law or a similar law of another state.

[5] had been committed by a judicial determination for treatment for the habitual use of a controlled substance or marijuana. [It is a defense to this offense that the defendant's ability to possess firearms has been restored by judicial proceedings.]

[6] had been confined or committed to a treatment facility in Minnesota or elsewhere as chemically dependent, had not completed treatment, and did not possess a certificate of a medical doctor or psychiatrist licensed in Minnesota or other satisfactory proof that the

person had not abused alcohol within the past two years,

[7] was a peace officer who had been informally admitted to a treatment facility for chemical dependency, and the officer did not possess a certificate from the head of the treatment facility discharging or provisionally discharging the officer from the treatment facility,

[8] had been charged in adult or juvenile court with committing a crime of violence, was placed in a pretrial diversion program by the court before disposition, and had not completed the diversion program, and the charge of committing the violence had not been dismissed,

[9] had been convicted of assault in the fifth degree in Minnesota or convicted in another state of committing an offense similar to assault in the fifth degree against a family or household member, three years had not elapsed since the date of conviction, and during that time had not been convicted of any other violation of assault in the fifth degree,

[10] had been convicted in Minnesota or elsewhere of assaulting a family or household member, was found by the court to have used a firearm in any way in the commission of the assault, and was prohibited for the period of time determined by the court from possessing a firearm,

[11] had been convicted in any court of a crime punishable by imprisonment for a term exceeding one year,[3]

[12] was a fugitive from justice as a result of having fled from any state to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding,

[13] was an unlawful user of controlled substances,

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[3] *See* M.S.A. § 624.712, subd. 10, for the definition of a "crime punishable by imprisonment for a term exceeding one year."

[14] had been judicially committed to a treatment facility in Minnesota or elsewhere as "mentally ill," "mentally retarded," or "mentally ill and dangerous,"

[15] was an alien who was illegally or unlawfully in the United States,

[16] had been discharged from the armed forces of the United States under dishonorable conditions,

[17] had renounced the person's citizenship, having formerly been a citizen of the United States,

[18] has been convicted, in this state or any other state, of (__________[4]), a gross misdemeanor, unless three years have passed since the date of conviction and, during that time, the defendant has not been convicted of any other listed crimes.

[19] has been convicted of a violation of (section M.S.A. § 609.244) (assault in the fifth degree) if the court determined that the assault was against a family or household member,[5] unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of another violation of ((M.S.A. § 609.224) (fifth degree assault) or (a violation listed in section (M.S.A. § 609.229) (crimes committed for the benefit of a gang); M.S.A. § 609.2231, subd. 4 (assaults motivated by bias); M.S.A. § 609.225 (false imprisonment); M.S.A. § 609.378 (neglect or endangerment of a child); M.S.A. § 609.582, subd. 4 (fourth degree burglary); M.S.A. § 609.665 (setting a spring trap); M.S.A. § 609.72 (riot); or (M.S.A. § 609.749) (stalking)).

[20] was subject to an order for protection.[6]

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[4] *See* M.S.A. § 624.713, subd. 1(k), for a list of the gross misdemeanor crimes.

[5] In accordance with section M.S.A. § 609.2242, subd. 8, Note that this section does not exist, although it will probably be included in a revisor's bill in 2015. The section does refer to "domestic assault."

[6] Either under M.S.A. § 260C.201, subd. 3(d) or M.S.A. § 518B.01, subd. 6(g).

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

The definitions of "pistol" and "semi-automatic military-style assault weapon" are from M.S.A. § 624.712.

The statute provides that where the defendant is a peace officer who has been informally admitted to a treatment facility for chemical dependency, it is an affirmative defense if the officer possesses a certificate from the head of the treatment facility, stating that the officer has been discharged or provisionally discharged from the treatment facility. For a definition of peace officer, see M.S.A. § 626.84.

In *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), the Supreme Court held it was prejudicial error to refuse to permit the defendant to judicially admit having been convicted of a crime of violence in order to keep the evidence of the prior conviction from the jury.

In *State v. Poupard*, 471 N.W.2d 686 (Minn. App. 1991), the Court of Appeals ruled that the defense bears the initial burden of production to show that an exception to the pistol permit application requirement applied. The Court held that the exceptions to the permit requirement of M.S.A. § 624.714, subd. 9(c), must be narrowly construed to avoid negating the legislative intent of the pistol permit requirement.

In *State v. Hicks*, 583 N.W.2d 757 (Minn. App. 1998), the Court of Appeals held that for purposes of the Hand Gun Control Act, an apartment building hallway was a "public place." Possession of a pistol in such a place without a permit constituted a violation of the statute.

CRIMJIG 32.22

POSSESSION OF A (DANGEROUS WEAPON) (AMMUNITION) (EXPLOSIVES) IN COURTHOUSE OR STATE BUILDING—DEFINED

Under Minnesota law, whoever possesses

[1] (a dangerous weapon) (ammunition) (explosives) within any courthouse complex

[2] (a dangerous weapon) (ammunition) (explosives) in any state building within the Capitol complex, other than the National Guard Armory,

is guilty of a crime.

COMMENT

M.S.A. § 609.66, subd. 1g.

CRIMJIG 32.23

POSSESSION OF A (DANGEROUS WEAPON) (AMMUNITION) (EXPLOSIVE) IN COURTHOUSE OR STATE BUILDING—ELEMENTS

The elements of possession of a (dangerous weapon) (ammunition) (explosives) in a (courthouse) (state building) are:

First, the defendant possessed a (dangerous weapon) (ammunition) (explosives) within (any courthouse complex) (a state building within the Capitol area complex, other than the National Guard Armory). [A firearm, whether loaded or unloaded, or even temporarily inoperable, is a dangerous weapon.] [A "dangerous weapon" is anything designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid[1] or anything else that, in the manner used or intended to be used, is known to be capable of producing death or great bodily harm, or any fire used to produce death or great bodily harm.] [An "explosive" means a chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, that is, with substantially instantaneous release of gas and heat, unless the compound, mixture, or device is otherwise specifically classified by the United States Department of Transportation. The term does not include black powder, smokeless powder, primers, and fuses when used for antique or replica muzzle loading rifles, pistols, muskets, shotguns, and cannons, or when used or possessed for rifle, pistol, or shotgun ammunition or fireworks.]

Second, the defendant knew[2] the (dangerous weapon) (ammunition) (explosives) (was) (were) in defendant's possession.

32.23

[1] A flammable liquid is defined by statute to be: Class 1 flammable liquids as defined in section 9.109 of the Uniform Fire Code, but not intoxicating liquor as defined in M.S.A. § 340.07. M.S.A. 609.01, subd. 6.

[2] *See State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012).

Third, the defendant was not a person who was otherwise authorized to possess the (dangerous weapon) (ammunition) (explosives).[3]

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.66, subd. 1g.

The definition for dangerous weapon is from M.S.A. § 609.02, subd. 6. The definition of explosive is from M.S.A. § 299F.72,

In *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012), the Supreme Court held that knowledge of possession is an element of the crime of possession of a pistol in a public place in violation of M.S.A. § 624.714, subd. 1a. In reliance on *Ndikum, ibid.,* the Committee has added the knowledge element to violations of M.S.A. § 609.66, subd. 1g, as the legislature's silence on the issue does not suggest that it intended to do away with the mens rea requirement.

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[3] M.S.A. § 609.66, subd. 1g(b), provides for an exception to the prohibition of the statute. The exception includes licensed peace officers, military personnel, persons who have authority to carry a pistol pursuant to permit, persons who possess dangerous weapons for display or evidence, or persons who have authorization of the county sheriff or the Commissioner of Public Safety. The Committee believes it is the burden of the prosecution to prove as an essential element that the defendant is not authorized to carry a firearm under any of these provisions.

CRIMJIG 32.24

SALE/POSSESSION OF A FIREARM SILENCER—DEFINED

Under Minnesota law, whoever (sells) (possesses) any device designed to silence or muffle the discharge of a firearm is guilty of a crime.

COMMENT

M.S.A. § 609.66, subd. 1a(1).

CRIMJIG 32.25

SALE/POSSESSION OF A FIREARM SILENCER—ELEMENTS

The elements of (sale) (possession) of a firearm silencer are:

First, the defendant (sold) (possessed) a device designed to silence or muffle the discharge of a firearm.

[Insert CRIMJIG 32.42 if possession is constructive.]

[Second, the defendant (sold) (possessed) the device in a (school) (park) (public housing) zone? [A "school zone" is any property owned, leased, or controlled by a school district or an organization operating a nonpublic school[1] where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.] [A "park zone" is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. Park zone includes the area within (300 feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.] [A "public housing zone" is a public housing project or development administered by a local housing agency, plus the area within (300 feet of the property's boundary,) (or) (one city block,) (whichever distance is greater).]

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

32.25 for the definition of a nonpublic school.

[1] *See* M.S.A. § 123.932, subd. 3,

COMMENT

In cities where no grid system is present, the term “one city block” does not apply and the transaction must take place within 300 feet of the park for the statute to apply. *See State v. Estrella*, 700 N.W.2d 496 (Minn. App. 2005).

When land surrounding a public park is divided into rectangular blocks bounded by city streets, the area “within one city block . . . of the park boundary” include the entire area of block adjacent to the park. *State v. Carufel*, 783 N.W.2d 539 (Minn. 2010) (a controlled substance case). This holding would presumably also apply to a school zone or public housing zone.

CRIMJIG 32.26

FURNISHING FIREARMS TO MINORS—DEFINED

Under Minnesota law, whoever in a municipality furnishes a minor under 18 years of age with (a firearm) (an airgun) (ammunition) (explosives) without the prior written consent of the minor's parent or guardian or the municipality's police department is guilty of a crime.

COMMENT

M.S.A. § 609.66, subd. 1b.

CRIMJIG 32.27

FURNISHING FIREARMS TO MINORS—ELEMENTS

The elements of furnishing (a firearm) (an airgun) (ammunition) (explosives) to a minor are:

First, the defendant furnished (a firearm) (an airgun) (ammunition) (explosives) to ________.

Second, the defendant furnished the (firearm) (airgun) (ammunition) (explosives) to ________ while in (the city of ________) (a municipality). [A "municipality" is a city, however organized.]

Third, at the time the defendant furnished ________ the (firearm) (airgun) (ammunition) (explosives), ________ was a minor under 18 years of age.

Fourth, at the time the defendant furnished the (firearm) (airgun) (ammunition) (explosives) to ________, the defendant did not have the prior written consent of ________'s parent or guardian, or of the police department of (the city of ________) (the municipality).

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

The definition of municipality is from M.S.A. § 414.011, subd. 2.

CRIMJIG 32.28

FURNISHING A DANGEROUS WEAPON—DEFINED

Under Minnesota law, whoever recklessly furnishes a person with a dangerous weapon in conscious disregard of a known substantial risk that the object will be possessed or used in furtherance of a felony crime of violence is guilty of a crime.

COMMENT

M.S.A. § 609.66, subd. 1c.

CRIMJIG 32.29

FURNISHING A DANGEROUS WEAPON—ELEMENTS

The elements of furnishing a dangerous weapon are:

First, the defendant furnished a dangerous weapon to ________. (A firearm, whether loaded or unloaded, or even temporarily inoperable, is a dangerous weapon.) (A "dangerous weapon" is anything designed as a weapon and capable of producing death or great bodily harm, any flammable liquid, or anything else that, in the manner used or intended to be used, is known to be capable of producing death or great bodily harm.)

Second, the defendant did so recklessly and in conscious disregard of a known substantial risk that the object would be possessed or used in furtherance of a felony crime of violence. A "felony crime of violence" includes ________.[1]

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

32.29

[1] The crime of violence is defined in M.S.A. § 609.1095, subd. 1(d). Further definition of crime through appropriate instruction in the CRIMJIG may be made at this point.

CRIMJIG 32.30

POSSESSION OF DANGEROUS WEAPON ON SCHOOL PROPERTY—DEFINED

Under Minnesota law, whoever knowingly possesses, stores, or keeps a dangerous weapon while knowingly on school property is guilty of a crime.

COMMENT

M.S.A. § 609.66, subd. 1d(a).

In *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012), the Supreme Court held that knowledge of possession is an element of the crime of possession of a pistol in a public place in violation of M.S.A. § 624.714, subd. 1a. In reliance on *Ndikum, id.,* the Committee has added the knowledge element as the legislature's silence on the issue does not suggest that it intended to do away with the mens rea requirement.

The Minnesota Supreme Court, in *In re C.R.M.*, 611 N.W.2d 802 (Minn. 2000), added a scienter requirement to M.S.A. § 609.66, subd. 1d, requiring the state to prove that the defendant, in that case, "knowingly" possessed a knife while on school property. In particular, the Court seems reluctant to impose criminal liability for possession of a knife, which has other uses. The language of the opinion suggests that a "dangerous weapon" which does not have any use other than as a weapon might receive different consideration.

CRIMJIG 32.31

POSSESSION OF DANGEROUS WEAPON ON SCHOOL PROPERTY—ELEMENTS

The elements of possession of a dangerous weapon on school property are:

First, the defendant knowingly[1] possessed, stored, or kept a dangerous weapon. A "dangerous weapon" is a firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that in the manner used or intended to be used is calculated or likely to produce death or great bodily harm, or any fire used to produce death or great bodily harm.

Second, the defendant's act took place while defendant was knowingly on school property. "School property" means [a public or private elementary, middle, or secondary school building and its improved grounds, whether leased or owned by the school] [a child care center licensed under chapter 245A during the period children are present and participating in a childcare program][the area within a school bus when that bus is being used by a school to transport one or more elementary, middle, or secondary school students to and from school-related activities, including curricular, cocurricular, noncurricular, extracurricular, and supplementary activities] [that portion of a building or facility under the temporary, exclusive control of a public or private school, a school district, or an association of such entities where conspicuous signs are prominently posted at each entrance that give actual notice to persons of the school-related use.

32.31

[1] In *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012), the Supreme Court held that knowledge of possession is an element of the crime of possession of a pistol in a public place in violation of M.S.A. § 624.714, subd. 1a. In reliance on *Ndikum, id.*, the Committee has added the knowledge element as the legislature's silence on the issue does not suggest that it intended to do away with the mens rea requirement.

Third, the defendant's act took place on (or about) ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.66, subd. 1d(a).

M.S.A. § 609.66, subd. 1d(d), provides seven exceptions to the prohibition of dangerous weapons on school property. In those cases in which the defendant raises a defense under those provisions, it is the burden of the prosecution to prove beyond a reasonable doubt that those provisions do not apply.

In *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012), the Supreme Court held that knowledge of possession is an element of the crime of possession of a pistol in a public place in violation of M.S.A. § 624.714, subd. 1a. In reliance on *Ndikum, id.,* the Committee has added the knowledge element as the legislature's silence on the issue does not suggest that it intended to do away with the mens rea requirement.

The Minnesota Supreme Court, in *In re C.R.M.*, 611 N.W.2d 802 (Minn. 2000), added a scienter requirement to M.S.A. § 609.66, subd. 1d, requiring the state to prove that the defendant, in that case, "knowingly" possessed a knife while on school property. In particular, the Court seems reluctant to impose criminal liability for possession of a knife, which has other uses. The language of the opinion suggests that a "dangerous weapon" which does not have any use other than as a weapon might receive different consideration.

CRIMJIG 32.32

USING OR BRANDISHING OF A (REPLICA FIREARM) (BB GUN) ON SCHOOL PROPERTY—DEFINED

Under Minnesota law, whoever knowingly uses or brandishes a (replica firearm) (BB gun) while knowingly on school property is guilty of a crime.

COMMENT

M.S.A. § 609.66, subd. 1d(a).

CRIMJIG 32.33

USING OR BRANDISHING OF A (REPLICA FIREARM) (BB GUN) ON SCHOOL PROPERTY—ELEMENTS

The elements of using or brandishing a (replica firearm) (BB gun) on school property are:

First, the defendant knowingly[1] used or brandished a (replica firearm) (BB gun). [A "replica firearm" is a device or object that is a facsimile or toy version of, and reasonably appears to be, a pistol, revolver, shotgun, sawed-off shotgun, rifle, machine gun, or rocket launcher, or any other firearm. A replica firearm includes a device or object designed to fire only blanks.] [A "BB gun" is a device that fires or ejects a shot measuring 0.18 of an inch or less in diameter.]

Second, the defendant's act took place while defendant was knowingly on school property. "School property" means [a public or private elementary, middle, or secondary school building and its improved grounds, whether leased or owned by the school] [a child care center licensed under chapter 245A during the period children are present and participating in a childcare program][the area within a school bus when that bus is being used by a school to transport one or more elementary, middle, or secondary school students to and from school-related activities, including curricular, co-curricular, non-curricular, extracurricular, and supplementary activities] [that portion of a building or facility under the temporary, exclusive control of a public or private school, a school district, or an association of such entities where conspicuous signs are prominently posted at each entrance that give actual notice to persons of the school-related use.

32.33

[1] In *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012), the Supreme Court held that knowledge of possession is an element of the crime of possession of a pistol in a public place in violation of M.S.A. § 624.714, subd. 1a. In reliance on *Ndikum, id.,* the Committee has added the knowledge element as the legislature's silence on the issue does not suggest that it intended to do away with the mens rea requirement.

Third, the defendant's act took place on (or about) ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.66, subd. 1d(a).

M.S.A. § 609.66, subd. 1d(d), provides seven exceptions to the prohibition of dangerous weapons on school property. In those cases in which the defendant raises a defense under those provisions, it is the burden of the prosecution to prove beyond a reasonable doubt that those provisions do not apply.

In *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012), the Supreme Court held that knowledge of possession is an element of the crime of possession of a pistol in a public place in violation of M.S.A. § 624.714, subd. 1a. In reliance on *Ndikum, id.,* the Committee has added the knowledge element as the legislature's silence on the issue does not suggest that it intended to do away with the mens rea requirement.

The Minnesota Supreme Court, in *In re C.R.M.*, 611 N.W.2d 802 (Minn. 2000), added a scienter requirement to M.S.A. § 609.66, subd. 1d, requiring the state to prove that the defendant, in that case, "knowingly" possessed a knife while on school property. In particular, the Court seems reluctant to impose criminal liability for possession of a knife, which has other uses. The language of the opinion suggests that a "dangerous weapon" which does not have any use other than as a weapon might receive different consideration.

CRIMJIG 32.34

POSSESSION OF A (REPLICA FIREARM) (BB GUN) ON SCHOOL PROPERTY—DEFINED

Under Minnesota law, whoever knowingly possesses, stores, or keeps a (replica firearm) (BB gun) while knowingly on school property is guilty of a crime.

COMMENT

M.S.A. § 609.66, subd. 1d(b).

CRIMJIG 32.35

POSSESSION OF A (REPLICA FIREARM) (BB GUN) ON SCHOOL PROPERTY—ELEMENTS

The elements of possession of a (replica firearm) (BB gun) on school property are:

First, the defendant knowingly[1] possessed a (replica firearm) (BB gun). [A "replica firearm" device or object that is a facsimile or toy version of, and reasonably appears to be, a pistol, revolver, shotgun, sawed-off shotgun, rifle, machine gun, or rocket launcher, or any other firearm. A "replica firearm" includes a device or object designed to fire only blanks.] [A "BB gun" is a device that fires or ejects a shot measuring 0.18 of an inch or less in diameter.]

Second, the defendant's act took place while defendant was knowingly on school property. "School property" means [a public or private elementary, middle, or secondary school building and its improved grounds, whether leased or owned by the school] [a child care center licensed under chapter 245A during the period children are present and participating in a childcare program] [the area within a school bus when that bus is being used by a school to transport one or more elementary, middle, or secondary school students to and from school-related activities, including curricular, cocurricular, noncurricular, extracurricular, and supplementary activities] [that portion of a building or facility under the temporary, exclusive control of a public or private school, a school district, or an association of such enti-

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32.35

[1] In *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012), the Supreme Court held that knowledge of possession is an element of the crime of possession of a pistol in a public place in violation of M.S.A. § 624.714, subd. 1a. In reliance on *Ndikum, id.,* the Committee has added the knowledge element as the legislature's silence on the issue does not suggest that it intended to do away with the mens rea requirement.

The Minnesota Supreme Court, in *In re C.R.M.*, 611 N.W.2d 802 (Minn. 2000), added a scienter requirement to M.S.A. § 609.66, subd. 1d, requiring the state to prove that the defendant, in that case, "knowingly" possessed a knife while on school property. In particular, the Court seems reluctant to impose criminal liability for possession of a knife, which has other uses. The language of the opinion suggests that a "dangerous weapon" which does not have any use other than as a weapon might receive different consideration.

ties where conspicuous signs are prominently posted at each entrance that give actual notice to persons of the school-related use.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.66, subd. 1d(b).

M.S.A. § 609.66, subd. 1d(d), provides seven exceptions to the prohibition of dangerous weapons on school property. In those cases in which the defendant raises a defense under those provisions, it is the burden of the prosecution to prove beyond a reasonable doubt that those provisions do not apply.

In *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012), the Supreme Court held that knowledge of possession is an element of the crime of possession of a pistol in a public place in violation of M.S.A. § 624.714, subd. 1a. In reliance on *Ndikum, id.,* the Committee has added the knowledge element as the legislature's silence on the issue does not suggest that it intended to do away with the mens rea requirement.

The Minnesota Supreme Court, in *In re C.R.M.*, 611 N.W.2d 802 (Minn. 2000), added a scienter requirement to M.S.A. § 609.66, subd. 1d, requiring the state to prove that the defendant, in that case, "knowingly" possessed a knife while on school property. In particular, the Court seems reluctant to impose criminal liability for possession of a knife, which has other uses. The language of the opinion suggests that a "dangerous weapon" which does not have any use other than as a weapon might receive different consideration.

CRIMJIG 32.36

POSSESSION OF A PISTOL WITHOUT A PERMIT—DEFINED

Under Minnesota law, whoever, other than a law enforcement officer, carries, knowingly holds, or possesses a pistol (in a motor vehicle) (in a snowmobile) (in a boat) (on or about the person's clothes or person) (in a public place or public area), without having first obtained a permit to carry the pistol, is guilty of a crime.

COMMENT

M.S.A. § 624.714, subd. 1.

CRIMJIG 32.37

POSSESSION OF A PISTOL WITHOUT A PERMIT—ELEMENTS

The elements of carrying a pistol without a permit are:

First, the defendant was not a law enforcement officer. The statutes define a law enforcement officer as a law enforcement officer who had authority to make arrests other than a citizen's arrest.

Second, the defendant knowingly[1] carried, held, or possessed a pistol (in a motor vehicle) (in a snowmobile) (in a boat) (on or about the person's clothing or the person) (in a public place or public area).

Third, the defendant did not possess a permit to carry the pistol. The statutes of Minnesota provide that a permit to carry a pistol is not required of a person who ________.[2]

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 624.714, subd. 1.

32.37

[1] In *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012), the Supreme Court held that knowledge of possession is an element of the crime of possession of a pistol in a public place in violation of M.S.A. § 624.714, subd. 1a. In reliance on *Ndikum, id.*, the Committee has added the knowledge element as the legislature's silence on the issue does not suggest that it intended to do away with the mens rea requirement.

[2] Exceptions to the requirement to carry a permit are found at M.S.A. § 624.714, subd. 9 and subd. 32. In those cases in which the defendant raises a defense under those provisions, it is the burden of the prosecution to prove beyond a reasonable doubt that those provisions do not apply.

For purposes of M.S.A. § 624.714, subd. 9(a) (1998), which established an exception to the requirement that an individual must have a permit to possess a pistol, a person's "place of business" does not include a vehicle used by a courier company's employee. *State v. Palmer*, 636 N.W.2d 810 (Minn. App. 2001).

Conviction of a second or subsequent violation constitutes a felony. In appropriate cases a special interrogatory may be necessary for the jury as to the existence of the prior conviction. If the defendant so elects, the defendant may judicially admit the prior conviction to prevent that information from being presented to the jury. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

CRIMJIG 32.38

POSSESSION OF (RIFLE) (SHOTGUN) (BB GUN) IN A PUBLIC PLACE WITHOUT A PERMIT—DEFINED

Under Minnesota law, whoever knowingly carries, holds, or possesses a (rifle) (shotgun) (BB gun) in a public place is guilty of a crime.

COMMENT

M.S.A. § 624.7181.

CRIMJIG 32.39

POSSESSION OF (RIFLE) (SHOTGUN) (BB GUN) IN A PUBLIC PLACE WITHOUT A PERMIT— ELEMENTS

The elements of carrying a (rifle) (shotgun) (BB gun) in a public place are:

First, the defendant was not a (law enforcement officer) (private detective or protective agent) authorized by law to carry firearms and acting in the scope of official duties.

Second, the defendant knowingly[1] carried, held, or possessed a (rifle) (shotgun) (BB gun). [A "BB gun" means a device that fires or ejects a shot measuring 0.18 of an inch or less in diameter.] The laws of Minnesota provide that "carry" does not include __________.[2]

Third, the defendant was in a public place.[3]

Third, the defendant's act took place on (or about) __________ in __________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of two

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32.39

[1] In *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012), the Supreme Court held that knowledge of possession is an element of the crime of possession of a pistol in a public place in violation of M.S.A. § 624.714, subd. 1a. In reliance on *Ndikum, id.*, the Committee has added the knowledge element as the legislature's silence on the issue does not suggest that it intended to do away with the mens rea requirement.

[2] See M.S.A. § 624.7181, subd. 1(b) 1–5.

[3] A definition of public place is found at M.S.A. § 624.7181, subd. 1(c). The exceptions to this provision are found at M.S.A. § 624.7181, subd. 1(a). In those cases in which the defendant raises a defense under those provisions, it is the burden of the prosecution to prove beyond a reasonable doubt that those provisions do not apply.

questions that will appear on the verdict form. The questions are: Was the defendant under the age of 21? The second question is: Did the defendant carry a semi-automatic military-style assault weapon? A "semi-automatic military-style assault weapon" means ________.[4]

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[4] See M.S.A. § 624.712, subd. 7.

CRIMJIG 32.40

FIREARM SERIAL NUMBER REMOVED—DEFINED

Under Minnesota law, whoever knowingly

[1] obliterates, removes, changes, or alter the serial number or other identification of a firearm

[2] receives or possess a firearm, the serial number or other identification of which has been obliterated, removed, changed or altered

[3] receives or possesses a firearm that is not identified by a serial number

is guilty of a crime.

COMMENT

M.S.A. § 609.667

CRIMJIG 32.41

FIREARM SERIAL NUMBER REMOVED—ELEMENTS

The elements of possession of a firearm with removed serial numbers are:

[1] First, the defendant obliterated, removed, changed, or altered the serial number or other identification of a firearm.

[2] First, the defendant received or possessed a firearm, the serial number or other identification of which has been obliterated, removed, changed or altered.

[3] First, the defendant received or possessed a firearm that was not identified by a serial number.

A "serial number" or "other identification" means the serial number or other information required under federal law for the identification of firearms.

Second, the defendant did so knowingly.[1]

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been prove beyond a reasonable doubt, the defendant is not guilty.

32.41

[1] In *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012), the Supreme Court held that knowledge of possession is an element of the crime of possession of a pistol in a public place in violation of M.S.A. § 624.714, subd. 1a. In reliance on *Ndikum, id.,* the Committee has added the knowledge element as the legislature's silence on the issue does not suggest that it intended to do away with the mens rea requirement.

CRIMJIG 32.42

"POSSESSION"—DEFINED

The law recognizes two kinds of possession: "actual possession" and "constructive possession." A person is in actual possession of ________ (a firearm) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ________ (the firearm) at a given time. A person is in constructive possession of ________ (a firearm) if ________ (the firearm) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ________[1] (the firearm). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.

The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ________ (a firearm), possession is exclusive. If two or more persons share actual or constructive possession of ________ (the firearm), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ________ (a firearm), whether exclusively or jointly with others.

COMMENT

In those cases where possession is an issue, the court should instruct the jury that possession may be actual or constructive, as well as exclusive or joint. *State v. Olson*, 326 N.W.2d 661 (Minn.1982); *State v. Willis*, 320 N.W.2d 726 (Minn.1982); *State v. Mollberg*, 310 Minn. 376, 246 N.W.2d 463 (1976); *State v. Florine*, 303 Minn. 103, 226 N.W.2d 609 (1975). Possession need not be by the defendant alone, but may be

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32.42

[1] In *State v. Hunter*, 857 N.W.2d 537 (Minn. App 2014) the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

shared with others. *State v. LaBarre*, 292 Minn. 228, 195 N.W.2d 435 (1972). See also *State v. Hunter*, 857 N.W.2d 537 (Minn. App. 2014), in which the Court of Appeals held that possession requires dominion and control over a controlled substance and not the place where the controlled substance is found.

A jury instruction materially and prejudicially misstates the law when it provides that defendant possessed a firearm if he exercised "authority, dominion, *or* control" over it. *State v. Porter*, 674 N.W.2d 424 (Minn. App. 2004).

CRIMJIG 32.43

OWN OR POSSESS MACHINE GUN OR SHORT-BARRELED SHOTGUN—DEFINED

Under Minnesota law, whoever knowingly (owns) (possesses) (operates) a (machine gun) (trigger activator) (machine gun conversion kit) (short-barreled shotgun) is guilty of a crime.

COMMENT

M.S.A. § 609.67

CRIMJIG 32.44

OWN OR POSSESS MACHINE GUN OR SHORT-BARRELED SHOTGUN—ELEMENTS

The elements of the crime of owning or possessing (a machine gun) (trigger activator) (machine gun conversion kit) (short-barreled shotgun) are:

First, the defendant knowingly[1] (owned) (possessed) (operated) a (machine gun) (trigger activator) (machine gun conversion kit) (short-barreled shotgun). ("Shotgun" means a weapon designed, redesigned, made or remade which is intended to be fired from the shoulder and uses the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger. "Short-barreled shotgun" means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun if such a weapon as modified has an overall length less than 26 inches.")

[Insert CRIMJIG 32.42 if possession is at issue.]

[Second, the defendant knew or had reason to know that the gun was a short-barreled shotgun. "To know" requires only that the actor believes that the specified fact exists. "Had reason to know" means that the defendant acted in conscious disregard of a substantial and unjustifiable risk that the specified fact exists [or will result from (his) (her) conduct]. This means the defendant (consciously) (intentionally) committed an act: 1) that created a risk that the weapon was a short-barreled shotgun; 2) the risk was substantial; 3) there was no adequate reason for taking the risk; 4) the defendant was aware of the risk; and 5) the defendant disregarded it.]

32.44

[1] In *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012), the Supreme Court held that knowledge of possession is an element of the crime of possession of a pistol in a public place in violation of M.S.A. § 624.714, subd. 1a. In reliance on *Ndikum, id.*, the Committee has added the knowledge element as the legislature's silence on the issue does not suggest that it intended to do away with the mens rea requirement.

[Second] [Third], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 32.45

CARRYING A PISTOL IN A PUBLIC PLACE WHILE (UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE) (UNDER THE INFLUENCE OF ALCOHOL)(HAS A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE)(HAS A BLOOD ALCOHOL CONCENTRATION OF LESS THAN 0.10 BUT MORE THAN 0.04)—DEFINED

Under Minnesota law, whoever knowingly carries a pistol on or about (the person's clothes) ((his) (her) person) in a public place

[1] while under the influence of a controlled substance

[2] while under the influence of a combination of controlled substances or a combination of a controlled substance and alcohol

[3] while knowingly under the influence of a chemical compound or combination of compounds listed as a hazardous substance that affects the nervous system, brain, or muscles so as to impair the person's clearness of intellect or physical control

[4] while under the influence of alcohol

[5] while having a blood alcohol concentration of 0.10 or more

[6] while having a blood alcohol concentration of less than 0.10 but more than 0.04

is guilty of a crime.

COMMENT

M.S.A. § 624.7142

CRIMJIG 32.46

CARRYING A PISTOL IN A PUBLIC PLACE WHILE (UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE) (UNDER THE INFLUENCE OF ALCOHOL)(HAS A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE)(HAS A BLOOD ALCOHOL CONCENTRATION OF LESS THAN 0.10 BUT MORE THAN 0.04)—ELEMENTS

The elements of the carrying a pistol in a public place offense are:

First, the defendant was knowingly[1] carrying a pistol on or about (his) (her) (clothes) (person).

Second, the defendant was in a public place.

Third, at the time, the defendant (was) (had)

[1] under the influence of a controlled substance.[2] ________ is a controlled substance. As part of this element the State must prove beyond a reasonable doubt that the substance in question was, in fact, ________.

[2] under the influence of a combination of controlled substances or a combination of a controlled substance[3] and alcohol. ________ is a controlled substance. As part of this element the State must prove beyond a reasonable doubt that the substance in question was, in fact, ________.

[3] knowingly under the influence of a chemical compound or combination of compounds listed as a hazardous

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32.46

[1] In *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012), the Supreme Court held that knowledge of possession is an element of the crime of possession of a pistol in a public place in violation of M.S.A. § 624.714, subd. 1a. In reliance on *Ndikum, id.,* the Committee has added the knowledge element as the legislature's silence on the issue does not suggest that it intended to do away with the mens rea requirement.

[2] See M.S.A. § 152.01, subd. 4 for the list of controlled substances.

[3] See M.S.A. § 152.01, subd. 4 for the list of controlled substances.

substance that affects the nervous system, brain, or muscles so as to impair the person's clearness of intellect or physical control. ________ is a hazardous substance. As part of this element the State must prove beyond a reasonable doubt that the substance in question was, in fact, ________.

[4] under the influence of alcohol so that it affected the defendant's nervous system, brain, or muscles so as to impair the person's clearness of intellect or physical control.

[5] a blood alcohol concentration of 0.10 or more

[6] a blood alcohol concentration of less than 0.10 but more than 0.04

COMMENT

Because a BB gun falls within the operative definition of "firearm," possession of a BB gun by a person convicted of a crime of violence is prohibited, notwithstanding the exemption of BB gun from the definition of "pistol." *State v. Fleming*, 724 N.W. 2d 537 (Minn. App. 2006.

In *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012), the Supreme Court held that knowledge of possession is an element of the crime of possession of a pistol in a public place in violation of M.S.A. § 624.714, subd. 1a. In reliance on *Ndikum, id.*, the Committee has added the knowledge element as the legislature's silence on the issue does not suggest that it intended to do away with the mens rea requirement.

CHAPTER 33

TERRORISM

Table of Instructions

CRIMJIG
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CRIMJIG 33.01

COMMITTING A FELONY TO FURTHER TERRORISM—DEFINED

Under Minnesota law, whoever commits a felony crime to further terrorism is guilty of a crime.

COMMENT

M.S.A. § 609.185(a)(7).

CRIMJIG 33.02

COMMITTING A FELONY TO FURTHER TERRORISM—ELEMENTS

First, the defendant (committed) (attempt to commit) (conspired to commit) the felony crime of ________. (Insert appropriate definition and elements.)

Second, at the time of the act defendant (committed) (attempted to commit) (conspired to commit) the crime in order to further terrorism. A felony crime is committed to "further terrorism" if it is a premeditated act involving violence to persons or property that is intended to terrorize, intimidate, or coerce a considerable number of members of the public in addition to the direct victims of the act; and it significantly disrupts or interferes with the lawful exercise, operation, or conduct of government, lawful commerce, or the right of lawful assembly.

(Insert appropriate element number) (Third), the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 33.03

MURDER IN THE FIRST DEGREE—WHILE COMMITTING A FELONY TO FURTHER TERRORISM—DEFINED

Under Minnesota law, whoever causes the death of a human being while [conspiring to commit] [attempting to commit] [or] [committing] a felony crime to further terrorism, and the death occurs under circumstances manifesting an extreme indifference to human life, is guilty of murder in the first degree.

COMMENT

M.S.A. § 609.185(a)(7).

CRIMJIG 33.04

MURDER IN THE FIRST DEGREE—WHILE COMMITTING A FELONY TO FURTHER TERRORISM—ELEMENTS

The elements of murder in the first degree are:

First, the death of (____) (a human being) must be proven.

Second, the defendant caused the death of (____) (a human being).

Third, the death occurred under circumstances manifesting an extreme indifference to human life.

Fourth, at the time of the act causing the death of (____) (a human being), defendant was (conspiring to commit) (attempting to commit) (committing) a felony crime[1] to further terrorism. A felony crime is committed to "further terrorism" if it is a premeditated act involving violence to persons or property that is intended to terrorize, intimidate, or coerce a considerable number of members of the public in addition to the direct victims of the act; and it significantly disrupts or interferes with the lawful exercise, operation, or conduct of government, lawful commerce, or the right of lawful assembly.

(Insert definition and elements of predicate crime, and Conspiracy and Attempt instructions if appropriate.)

Fifth, the defendant's act took place on (or about) ____ in ____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

33.04

[1] The crime alleged in the complaint. The court should instruct the jury on the definition and elements of the crime alleged as well as elements of premeditation (CRIMJIG 11.02) unless the defendant stipulates to the underlying crime. *See State v. Charles*, 634 N.W.2d 425 (Minn. Ct. App. 2001).

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